Supreme Court, U.S.
FILED
JAN 29 1993
OFFICE OF THE CLERK

92-1288

No. _____

In The

Supreme Court of the United States

October Term, 1992

HANK WILLIAMS, JR., ACUFF-ROSE-OPRYLAND MUSIC, INC., MILENE-OPRYLAND MUSIC, INC., WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., FRED ROSE MUSIC, INC., and MILENE MUSIC, INC.,

Petitioners,

vs.

SUPREME COURT, U.S.
WASHINGTON, D.C. 20543

CATHY YVONNE STONE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

APPENDIX TO PETITION VOLUME II

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88-7860

In The
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CATHY YVONNE STONE, an individual,

Plaintiff-Appellant,

-against-

HANK WILLIAMS, JR., BILLE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a division of CHAPPELL & CO., INC., a Delaware corporation, ABERBACH ENTERPRISES, LTD., a New York corporation, ACUFF-ROSE OPRYLAND MUSIC, INC., a Tennessee corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee corporation, WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee corporation, and MILENE MUSIC, INC., a Tennessee corporation,

Defendants-Appellees.

From a Final Order of the United States District Court for the Southern District of New York.

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CATHY YVONNE STONE, an Individual,

Plaintiff-Appellant,

V

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a Division of CHAPPELL & CO., INC., A Delaware Corporation, ABERBACH ENTERPRISES, LTD., A New York Corporation, ACUFF-ROSE-OPRYLAND MUSIC, INC., a Tennessee Corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee Corporation, WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee Corporation, and MILENE MUSIC, INC., a Tennessee Corporation,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT
COURT
FOR THE SOUTHERN DISTRICT
OF NEW YORK

PETITION FOR REHEARING

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DOCKET NO. 88-7860

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

CATHY YVONNE STONE, an Individual,

Plaintiff-Appellant,

V

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a Division of CHAPPELL & CO., INC., A Delaware Corporation, ABERBACH ENTERPRISES, LTD., A New York Corporation, ACUFF-ROSE-OPRYLAND MUSIC, INC., a Tennessee Corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee Corporation, WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee Corporation, and MILENE MUSIC, INC., a Tennessee Corporation,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

PETITION FOR REHEARING

Pursuant to Rule 40 of the Federal Rules of Appellate Procedure, appellant Cathy Yvonne Stone presents this Petition for Rehearing in the above-entitled appeal, and

in support thereof respectfully presents the following grounds.

In an Opinion dated April 21, 1989, this Court affirmed the decision of the United States District Court for the Southern District of New York granting summary judgment in favor of appellees on the ground of laches. Judgment thereon was entered on April 21, 1989. This Petition for Rehearing is timely under Rule 40(a) of the Federal Rules of Appellate Procedure.

I

A REHEARING SHOULD BE GRANTED BECAUSE THE COURT OVERLOOKED AND/OR MISAPPREHENDED CONTROLLING POINTS OF LAW

In affirming the District Court's decision, this Court overlooked and/or misapprehended the following points of law:

1. Renewal copyrights and the interests therein are created by Congress in section 304 of the 1976 Copyright Act, 17 U.S.C. §304. *Hill & Range Songs, Inc. v. Fred Rose Music, Inc.*, 570 F.2d 554, 556 (6th Cir. 1978). An owner of an interest in a renewal copyright is entitled to an accounting of his/her share of the income earned from each licensing of the renewal copyright. *Shapiro, Bernstein & Co. v. Jerry Vogel Music Co.*, 223 F.2d 252 (2d Cir. 1955). A claim for breach of that duty to account does not arise until the duty is violated – *i.e.*, when the renewal copyright is licensed and the income therefrom is not properly accounted for.

In affirming the District Court's award of summary judgment as to the entire action, this Court overlooked or

misapprehended the nature of appellant's interest in the renewal copyrights. This Court's decision divests appellant of the Congressionally-created right to her share of the income to be earned from the licenses to use the renewal copyrights (a) which appellees have granted since the action was filed and (b) which will be granted during the 37-41 years remaining in the renewal copyright terms after suit was filed, simply because she waited 1-3/4 years longer than the applicable limitations period before filing suit. Laches might bar appellant from receiving her share of the income earned from licenses granted before September 12, 1982 or even September 12, 1985. But it was a misuse of the defense and a miscarriage of justice to preclude her from receiving her share of the licensing income for the next 37-41 years. *Halcon Int'l. v. Monsanto Australia, Ltd.*, 446 F.2d 156, 159 (7th Cir.), *cert. denied*, 409 U.S. 949 (1971).

2. This Court also overlooked the continuing nature of appellees' wrongful appropriation of appellant's interest in the renewal copyrights and failed to follow the well-established principle that laches precludes only the recovery of pre-filing damages but does not bar an action from proceeding as to post-filing events. *Leinoff v. Louis Milona & Sons, Inc.*, 726 F.2d 734, 741 (9th Cir. 1984) [laches does not bar action, only recovery of pre-filing damages]; *Hampton v. Paramount Pictures Corp.*, 279 F.2d 100, 105 (9th Cir.), *cert. denied*, 364 U.S. 882 (1960) [delay immaterial where only prospective relief sought]; *In Re Yarn Processing Patent Validity Litig. (No. II)*, 602 F. Supp. 159, 170 (W.D.N.C. 1984) [laches bars recovery only for acts occurring prior to filing of complaint]; *Hayden v. Chalfant Press, Inc.*, 177 F. Supp. 303, 307 (S.D. Cal. 1959),

aff'd, 281 F.2d 543 (9th Cir. 1960). *See generally*, 3 *Nimmer on Copyright*, §12.06 (1988). This rule is not limited to infringement actions. *See, e.g., Environmental Defense Fund v. Marsh*, 651 F.2d 983, 1005, n. 32 (5th Cir., Unit A, 1981).

This Court's reliance on *Haas v. Leo Feist, Inc.*, 234 F. 105 (S.D.N.Y. 1916) to support its contrary result is based on a misapprehension of that case. First, the delay was not 16 years, it was approximately 13 months. 234 F. at 106. Second, all the money that was to be earned from the infringing song was earned by the defendants before the suit was brought. *Id.* Third, Judge Hand refused to give Piantadosi, the non-innocent infringer, the benefit of the rule. *Id.* at 108. Fourth, an injunction against future infringements was granted. *Id.* at 109.[1] Fifth, the result as to the innocent infringers is questionable given the three-year statute of limitations in 17 U.S.C. §507(b).

The *Haas* opinion in fact supports appellant's position on this point. All of the money to be earned from licensing the renewal copyrights has not yet been earned; over 35 years remain. Appellees are not innocent wrongdoers; they have always known of appellant's claim. Judge Hand did not bar relief as to future events because of the delay, just the recovery of pre-filing profits.

3. This Court also overlooked the point of law that the time allowed by the statute of limitations is not counted against a plaintiff in a laches analysis, for laches is no defense to an action filed within the statute of limitations. *United States v. RePass*, 688 F.2d 154, 156 (2d Cir. 1982).

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[1] Upon rehearing, the complaint was dismissed on an unrelated ground.

The applicable limitations period began on September 12, 1983, 17 U.S.C. §507(b) and *Mount v. Book-of-the Month Club*, 555 F.2d 1108, 1111 (2d Cir 1977). Appellant was relieved of her fillial obligations by a December 1980 telephone call from her adopted father [Jt.App. 242a, Opinion at 2957-58]. Thus, the delay to be evaluated is at most 1-3/4 years (December 1980 to September 1982), not five years as this Court decided [Opinion at 2958].

II

A REHEARING SHOULD BE GRANTED BECAUSE THE COURT OVERLOOKED AND/OR MISAPPREHENDED NUMEROUS MATERIAL FACTS

In its Opinion this Court also overlooked and/or misapprehended the following material facts:

1. The Court held that appellees were prejudiced by appellant's failure to file suit between 1980 and 1985 because "some of the key people having knowledge of the events preceding [her] birth have died since 1974 – George Deupree, Bobbi Jett and Billie Jean Williams Berlin" [Opinion at 2960]. Yet those individuals either had no first hand knowledge of the events preceding appellant's birth [Deupree], died before 1980 [Jett] or were alive when this suit was filed [Williams Berlin].[2] Moreover,

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[2] Billie Jean Williams Berlin is still alive. If the Court meant Audrey Mae Williams rather than Billy Jean Williams Berlin, the misapprehension nevertheless remains. Audrey Mae Williams was the first wife of Williams, Sr. *Hill & Range Songs, Inc. v. Fred Rose Music, Inc.*, 403 F.Supp. 420 (M.D. Tenn. 1975), *affirmed*, 570 F.2d 554 (6th Cir. 1978). They were divorced in 1952, and she died in 1975 [Jt. App. 192a, ¶80].

Mrs. Deupree, Drayton Hamilton, Judge Emmett [sic], the Alabama P & S officials with whom appellant came in contact and numerous other percipient witnesses were alive when this suit was filed (and were deposed). No material witnesses became unavailable between 1980 and 1982 (or 1985), and thus appellees did not suffer this form of prejudice because of that delay.

2. The issue as to which the deceased witnesses supposedly would have testified – whether appellant is the natural child of Hank Williams, Sr. – was irrelevant to the District Court's decision because that court assumed she was for purposes of the motion. Furthermore, the Alabama state court held in 1987 that Williams, Sr. was her natural father. Thus, no testimony material to appellant's ancestry was lost after December, 1980.

3. This Court held appellees would be prejudiced because they "entered into numerous transactions involving Williams, Sr.'s songs . . . [which] were premised on the apparent certainty of the ownership of the songs' renewal rights – attributable to appellant's delay [Opinion at 2960-61]. In reaching that conclusion this Court overlooked the following facts:

> a) Any mechanical license granted by the appellees after September 12, 1985 was granted with full knowledge of this lawsuit. Mechanical licenses are granted for a particular use, not for a term of years. The amount of the license fee in no way depends on the number of owners of the renewal copyright being licensed. It is either negotiated on a case by case basis with the licensee or set by statute. 17 U.S.C. §115. *See Recording Indus. Ass'n of America v. Copyright Royalty Tribunal*, 662 F.2d 1, 4 (D.C. Cir. 1981).

There will be hundreds, if not thousands, of such licenses granted between September 12, 1985 and the end of the various renewal copyright terms. *See Mills Music, Inc. v. Snyder*, 469 U.S. 153, 158 (1985) and Rose Affidavit [Jt. App. 252a]. Each of these licenses will have been or will be granted with full knowledge of appellant's claim. Allowing appellant to proceed to trial to determine her right to share in the income earned from those licenses will not deprive appellees of the benefits of any position taken vis-á-vis these licenses in reliance on appellant's supposed inaction.

b) The assignment of Williams, Jr.'s interest in the renewal copyrights to the Acuff/Rose Interests in 1963 [Jt. App. 181a-82a] and the assignment of Williams Berlin's interest in the renewal copyrights to the Aberbach Interests in 1969 [Jt. App. 182a] were made long before 1980. Those agreements were negotiated *with full knowledge* of appellant's potential claim. Appellees sought to eliminate that potential claim by way of the 1967-1968 Alabama proceedings. Appellant's delay between 1980 and 1985 made no difference in those decisions.

c) The supposed prejudice to be suffered by Williams, Jr. and Williams Berlin by having to share the income received before September 1983 (or 1985) could be totally ameliorated by (1) denying appellant the right to share in that income, *Halcon Int'l., Inc. v. Monsanto Australia, Ltd., supra*, or (2) requiring appellant to reimburse them for the tax consequences (which is all they complain about). Prejudice which can be ameliorated so easily should not support a laches defense.

d) There is no competent evidence in the record to support the claim of prejudice by reason of the May 1985 acquisition by Acuff-Rose-

Opryland Music, Inc. ("ARO") and Milene Opryland Music, Inc. ("MOM"), of the assets of Acuff-Rose Publications, Inc., Milene Music, Inc. Fred Rose Music, Inc. and Acuff-Rose Songs, supposedly without knowledge of appellant's potential claim. The conclusory Wentworth Affidavit [Jt. App. 256a-260a] does not supply any such evidence. Rule 56(e) of the Federal Rules of Civil Procedure.

In fact, that affidavit and the Purchase Agreement [Jt. App. 624a-689a] evidences a ready means by which ARO and MOM can protect themselves from any such prejudice – by withholding payments due under the promissory notes pending a reevaluation of the value of the assets pursuant to ¶4 of the Purchase Agreement. [Jt. App. 260a, ¶17 and Jt. App. 638a-39a, ¶4]. MOM and ARO agreed upon the purchase price according to what they believe *they*, as the publisher, could earn from licensing all the copyrights they purchased (not just the copyrights at issue herein). It does not matter, logically or otherwise, to MOM or ARO how many individuals own interests in the renewal copyrights. However many there are, all will participate in the 50% writer's share[3] of the license fees ARO and MOM collect. ARO and MOM will collect their 50% publisher's share regardless.

The sellers of the copyrights, Acuff and Rose, knew of appellant's claim, participated in the 1967-1968 Alabama proceedings, and supposedly relied on the resulting court orders in making the representations and warranties they made to ARO and MOM. They would have

---

[3] That percentage is the "standard practice in the music publishing industry." *Harry Fox Agency, Inc. v. Mills Music, Inc.*, 720 F.2d 733, 735 (2d Cir. 1983), *reversed sub nom. Mills Music Inc. v. Snyder, supra.*

> made the same *res judicata* arguments in 1980 as they made in the court below in support of their motion. There is no support for this Court's conclusion that they were lulled into a false sense of security by appellant's failure to challenge the 1967-1968 orders earlier than she did.

"Lack of diligence, standing alone, is insufficient to support a claim of laches; the party asserting the claim also must establish that it was prejudiced by the delay." *Marjorica, S.A. v. R. H. Macy & Co., Inc.*, 762 F.2d 7, 8 (2d Cir. 1985). This Court's determination that appellees will be prejudiced by reason of the delay from 1980 to 1985 is not supported by the evidence in the record. This Court misapprehended the facts upon which its determination of prejudice is based.

4. This Court misapprehended the nature of the "discussion" concerning the 1952 Williams, Sr.-Jett custody and support agreement that appellant had with Drayton Hamilton after 1980 [Opinion at 2955]. The only thing about the agreement "discussed" during that meeting was that the document was part of sealed court records. Appellant did not learn the contents of that agreement, and thus that Williams, Sr. had not abandoned her as she previously believed, until 1984 when Keith Adkinson obtained it and read it to her [Jt.App. 216a(¶70) and April 27, 1987 Stone Affidavit, ¶¶8 and 9]. She filed suit within a year after that.

III

CONCLUSION

For the foregoing reasons, appellant respectfully petitions for a rehearing of this appeal.

Dated: May 4, 1989

Respectfully submitted,

RUDIN AND APPEL
A Professional Corporation
9601 Wilshire Blvd., Suite 800
Beverly Hills, California 90210

OF COUNSEL:
MILTON A. RUDIN
JOSEPH L. GOLDEN

COBLENCE WARNER
HAMILTON & SMITH
1370 Avenue of the Americas
New York, New York 10019

OF COUNSEL:
KENNETH E. WARNER

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 9601 Wilshire Boulevard, Penthouse, Beverly Hills, California 90210.

On May 4, 1989, I served the foregoing document described as follows: PETITION FOR REHEARING on the interested parties in this action by placing two true copies thereof enclosed in three sealed envelopes with postage thereon fully prepaid in the United States Mail at Beverly Hills, California, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare that I am employed in the office of an attorney who is a member of the bar of this Court at whose direction the service was made.

/s/ Christine H. Anderson
Christine H. Anderson

Subscribed to and sworn before me
on this 4th day of May, 1989.

/s/ Helen Montrose
Notary Public

OFFICIAL SEAL
HELEN MONTROSE
Notary Public-California
LOS ANGELES COUNTY
My Comm. Exp. Apr. 23, 1991

SERVICE LIST

Alan L. Shulman, Esq.
Silverman, Shulman & Slotnick, P.C.
136 East 57th Street
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Lawrence I. Fox, Esq.
Berger, Steingut, Weiner,
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New York, New York 10022

Thomas R. Levy, Esq.
300 East 42nd Street, 9th Floor
New York, New York 10017

APPENDIX G-3

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United STates [sic] Court of Appeals, in and for the Second circuit, held at the United States Courthouse, in the City of New York, on the 23rd day of May one thousand nine hundred and eighty-eight.

Present: HON. ELLSWORTH A. VAN GRAAFEILAND,
HON. RICHARD J. CARDAMONE,
HON. LAWRENCE W. PIERCE,

88-7860

CATHY YVONNE STONE, and [sic] Individual,

Plaintiff-Appellant,

(FILED MAY 23 1989)

-V-

HANK WILLIAMS, JR. ET. AL.,

Defendants-Appellee,

A petition for a rehearing having been filed herein by counsel for the plaintiff-appellant, Cathy Yvonne Stone,

Upon consideration thereof, it is

ORDERED that said petition be and it hereby is DENIED.

/s/ Elaine B. Goldsmith
ELAINE B. GOLDSMITH
Clerk

APPENDIX G-4

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Second Circuit Rule 27(a) governing use of this form is reprinted on reverse of Page 2 *Note requirement that supporting affidavits be attached*

CATHY YVONNE STONE

v

HANK WILLIAMS, JR., et al.

Use short title

88-7860 *Docket Number*

NOTICE OF MOTION

state type of motion

for RECALL OF MANDATE AND ORDER GRANTING LEAVE TO FILE PETITION FOR REHEARING AND REHEARING IN BANC

MOTION BY: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

MILTON A. RUDIN, ESQ *
RUDIN and APPEL, a Professional Corporation
9601 Wilshire Boulevard, Suite 800
Beverly Hills, California 90210
(213) 274-4844

OPPOSING COUNSEL: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

ALAN L. SHULMAN, ESQ. **
Silverman, Shulman & Slotnick, P.C.
136 East 57th Street

New York, New York 1002
(212) 758-2020

Has consent of opposing counsel:

A. been sought? [ ] Yes [X] No

B. been obtained? [ ] Yes [X] No

Has service been effected? [X] Yes [ ] No

Is oral argument desired? [ ] Yes [X] No

(Substantive motions only)

Requested return date:

(See Second circuit Rule 27(b))

Has argument date of appeal been set:

A. by scheduling order? [X] Yes [ ] No

B. by firm date of argument notice? [X] Yes [ ] No

C. If Yes, enter date: February 1, 1989. Decision: April 21, 1989

Judge or agency whose order is being appealed:

Honorable John F. Keenan, S.D.N.Y.

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below? [ ] Yes [ ] No

(See F.R.A.P. Rule 8)

Would expedited appeal eliminate need for this motion? [ ] Yes [ ] No

If No, explain why not:

Will the parties agree to maintain the status quo until the motion is heard? [ ] Yes [ ] No

* Coblence, Warner, Hamilton & Smith
1370 Avenue of the Americas
New York, N.Y. 10019 (212) 957-9700

Brief statement of the relief requested:

Appellant requests that the mandate of this Court issued on June 5, 1989, be recalled in order that Appellant be permitted to file a Petition for Rehearing and Rehearing In Banc, and that said Petition be ordered filed within fourteen (14) days after this Motion is granted.

Complete Page 2 of This Form

By: *(Signature of attorney)*

/s/ Milton A. Rudin
Signed name must be printed beneath

Milton A. Rudin
Appearing for: *(Name of party)*

Cathy Yvonne Stone

Date

July 31, 1989

Appellant or Petitioner:

[XX] Plaintiff [ ] Defendant

Appellee or Respondent:

[ ] Plaintiff [ ] Defendant

ORDER

Kindly leave this space blank

IT IS HEREBY ORDERED that the motion be and it hereby is

granted denied

** Lawrence I. Fox, Esq.
Berger, Steingut, Weiner, Fox & Stern
600 Madison Avenue
New York, New York 10022
(212) 980-1400

Thomas R. Levy, Esq.
300 East 42nd Street, 9th Floor
New York, New York 10017
(212) 682-6110

_____

_____

Previous requests for similar relief and disposition:

None. However, Appellant did file a Petition for Rehearing previously, which was denied on May 23, 1989.

Statement of the issue(s) presented by this motion:

Whether this Court should recall its mandate and grant Appellant leave to file a second petition for rehearing and rehearing in banc in light of *New Era Publications International ApS v. Henry Holt and Co.*, 873 F.2d 576 (2d Cir. 1989) and *Catherine Yvonne Stone v. Gulf American Fire and Casualty Co.*, Case No. 87-269 (Alabama Supreme Court, July 5, 1989).

Brief statement of the facts (*with page references to the moving papers*):

1. On April 21, 1989, the judgment of this Court affirming the District Court's decision was filed. On May 5, 1989, Appellant filed her Petition for Rehearing,

which was denied on May 23, 1989. On June 5, 1989, this Court's mandate issued. (Memorandum at 1-2.)

2. On July 5, 1989, the Alabama Supreme Court decided *Catherine Yvonne Stone v. Gulf American Fire and Casualty Co.*, Case No. 87-269. That Court held that the 1967-1968 judgments that Appellant was not an heir of Williams, Sr. had been obtained through fraud committed by Irene Smith, Robert Stewart and others, including certain of the Appellees. That court further held that Appellant is the natural daughter and an heir of Williams, Sr., and is entitled to a share of the proceeds of his estate and of the renewal copyrights commencing with August 1985 (Memorandum at 2-3).

3. On April 19, 1989, another panel of this Court decided *New Era Publications International ApS v. Henry Holt and Co.*, 873 F.2d 596 (2d Cir. 1989). That panel recognized and applied the general rule, not applied by this Court, that laches does not destroy the right or preclude all relief whatever in cases involving copyrights (Memorandum at 3-4).

Summary of the argument (*with page references to the moving papers*);

1. Because the mandate has issued, it must be recalled before Appellant can file a second petition for rehearing and/or a petition for rehearing in banc. Whether to recall the mandate is vested in this Court's discretion (Memorandum at 5).

2. A direct conflict now exists in this Circuit regarding the correct application of laches in copyright cases such as this, between this Court's decision and *New Era Publications International ApS v. Henry Holt and Co.*, 873 F.2d 576 (2d Cir. 1989) (Memorandum at 6-8).

3. A change in circumstances and conflict exists between this Court's decision and the Alabama Supreme Court's decision in *Catherine Yvonne Stone v. Gulf American Fire and Casualty Co.*, regarding Appellant's

rights to the renewal copyrights (Memorandum at 5-6).

4. The change in circumstances and these conflicts justify a recall of the mandate so that this Court's decision can be reconsidered in light of those recent decisions.

APPENDIX G-5

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CATHY YVONNE STONE v HANK WILLIAMS, JR., et al. *Use short title*	88-7860 **NOTICE OF MOTION** (filed Aug. 1, 1989) *state type of motion* for RECALL OF MANDATE AND ORDER GRANTING LEAVE TO FILE PETITION FOR REHEARING AND REMAINING IN BANC

MOTION BY: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

MILTON A. RUDIN, ESQ.*
RUDIN and APPEL, a Professional Corporation
9601 Wilshire Boulevard, Suite 800
Beverly Hills, California 90210
(213) 274-4844

Has consent of opposing counsel:

A. been sought? [ ] Yes [X] No

B. been obtained? [ ] Yes [X] No

Has service been effected? [X] Yes [ ] No

Is oral argument desired? [ ] Yes [X] No

(Substantive motions only)

Requested return date:

(See Second Circuit Rule 27(b))

Has argument date of appeal been set:

A. by scheduling order? [X] Yes [ ] No

B. by firm date of argument notice? [X] Yes [ ] No

C. If Yes, enter date: February 1, 1989, Decision; Judge or agency whose order is being appealed: April 21, 1989

Honorable John F. Keenan, S.D.N.Y.

OPPOSING COUNSEL: *(Name, address and tel. no of law firm and of attorney in charge of case)*

ALAN L. SHULMAN, ESQ. **
Silverman, Shulman & Slotnick, P.C.
136 East 57th Street
New York, New York 10022
(212) 758-2020

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below? [ ] Yes [ ] No

(See F.R.A.P. Rule 8)

Would expedited appeal eliminate need for this motion? [ ] Yes [ ] No

If No, explain why not:

Will the parties agree to maintain the status quo until the motion is heard? [ ] Yes [ ] No

* Coblence, Warner, Hamilton & Smith
1370 Avenue of the Americas
New York, N.Y. 10019 (212) 957-9700

Brief statement of the relief requested:

Appellant requests that the mandate of this Court issued on June 5, 1989, be recalled in order that Appellant be permitted to file a Petition for Rehearing and Rehearing

In Banc, and that said Petition be ordered filed within fourteen (14) days after this Motion is granted.

Complete Page 2 of This Form

By: *(Signature of attorney)*

/s/ Milton A. Rudin

Appearing for: *(Name of party)*
Cathy Yvonne Stone

Appellant or Petitioner:
[X] Plaintiff

Signed name must be printed beneath

Milton A. Rudin

Date

July 31, 1989

ORDER

Kindly leave this space blank

IT IS HEREBY ORDERED that the motion be and it hereby is granted and the mandate of this Court issued June 5, 1989 is recalled. Appellant should file a brief not to exceed 10 pages within 14 days of the date of this order and the appellee may file an opposing brief not to exceed 10 pages within 7 days thereafter. The issue to be briefed should be confined to the issue of how the Alabama Court's finding of fraud affects our determination regarding Stone's laches.

No oral argument is granted.

Ellsworth Van Graafeiland
Richard J. Cardamone
Lawrence W. Pierce
Circuit Judge

Date

** Lawrence I. Fox, Esq.
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600 Madison Avenue
New York, New York 10022
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(filed Aug 24, 1989)

APPENDIX G-6
88-7860

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CATHY YVONNE STONE, an Individual,

Plaintiff-Appellant,

V

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a Division of CHAPPELL & CO., INC., A Delaware Corporation, ABERBACH ENTERPRISES, LTD., A New York Corporation, ACUFF-ROSE-OPRYLAND MUSIC, INC., a Tennessee Corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee Corporation, WESLEY H. ROSE AND ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee Corporation, and MILENE MUSIC, INC., a Tennessee Corporation,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PETITION FOR REHEARING AND SUGGESTION FOR REHEARING IN BANC

RUDIN AND APPEL
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OF COUNSEL:
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JOSEPH I. GOLDEN

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OF COUNSEL:
KENNETH E. WARNER

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STATUTES

17 U.S.C. §101 8

Pursuant to Fed.R.App.P. 40 and this Court's August 24, 1989 Order, Appellant submits this Petition for Rehearing. For the reasons set forth in Section II, Appellant respectfully suggests that the rehearing be held in banc.

I. THE ALABAMA SUPREME COURT'S FINDING OF FRAUD DEFEATS THE LACHES DEFENSE

There was no finding of fraud in connection with the 1967-1968 Alabama proceedings when this Court rendered its decision. Summary judgment had been entered against Appellant on that claim by the Alabama trial court. Thus this Court was not called upon to decide whether that fraud excused Appellant's delay or otherwise defeated the laches defense. The Alabama Supreme Court's finding that legal fraud was committed by Robert Stewart, Irene Smith "and others" (including Appellees) and that therefore, the 1967-1968 orders should be set aside, requires this Court to address that issue, vacate its initial decision and reverse the District Court's summary judgment.

The Alabama Supreme Court has held that Stewart, Smith "and others" concealed (1) the "clear and convincing" evidence of Appellant's paternity; (2) Stewart's belief, shared by Acuff/Rose, that Appellant was entitled to a share of the Williams, Sr. estate and of the renewal copyrights; and (3) that between 1969 and 1975, Stewart set aside a portion of the estate income in case Appellant asserted a claim. [Alabama Opinion at 6-8, 10-20 and 22-24.] The court records, including the 1952 custody/support agreement which the Alabama Court opined might have sufficed to legitimate Appellant [Id., at 31,

n.19], were sealed so that the information contained therein, just like the sealed adoption records, would remain secret forever.

The "others" include Appellees Williams, Jr., Rose and, as their assignees or successors, the "Acuff/Rose Interests". Stewart's 1962 correspondence on behalf of Irene Smith, Williams, Jr.'s guardian, during which he recognized Appellant's rights and suggested ways to terminate them, was with counsel for Rose [Opinion at 16-17]. When Irene Smith concealed the evidence of paternity, she did so as Williams, Jr.'s guardian and administratrix of the estate [*Id.* at 23-24]. When, during his testimony in the 1967-1968 proceedings, Stewart concealed what he knew about Appellant, her potential rights and his efforts to cut them off, he was the attorney for Smith and the estate [*Id.* at 12, 20, 22]. When Stewart withheld Appellant's share of the estate income, he so advised counsel for Williams, Jr. [*Id.* at 19]. He also advised Williams, Jr.'s counsel in 1974 that Appellant had picked up her homestead allowance and warned that "further trouble may ensue" [*Id.*]. Williams, Jr. never disavowed Stewart's actions and went along with the concealment.

Even if one assumes he was not actively involved in the fraud, Williams, Jr. is charged with Stewart's (and Smith's) fraud by virtue of his relationship with them. Stewart was representing Williams, Jr. (by way of Smith) when he conspired with Acuff/Rose's counsel. After Williams, Jr. was represented by other counsel, Stewart plotted with that counsel as he had with Acuff/Rose's counsel. Under Alabama law, "[i]t is elementary that omissions and commissions of an attorney at law are to

be regarded as acts of the client whom he represents." *Lawrence v. Gayle*, 312 So.2d 385, 387 (Ala. 1975). As Acuff/Rose's principal with respect to the renewals, Williams, Jr. is charged with their conduct as well. *Arkel Land Co. v. Cagle*, 445 So.2d 858, 862 (Ala. 1983) [agent's (attorney) misrepresentation imputed to principal (client)].

The Acuff/Rose Interests also must be charged with the fraud because they conspired with Stewart and Smith. [Opinion at 16-17]. Under Alabama law, a co-conspirator is liable for the acts of each of the other co-conspirators and is liable to anyone injured by those acts. *Stokely v. State*, 49 So.2d 284, 291 (Ala. 1950). To the extent Tennessee law might apply, the result is the same. *Hardwin v. Caldwell*, 695 S.W.2d 189 (Tenn. Ct. App. 1985).

The reason for the concealment is obvious. Had Appellant's renewal rights been recognized in 1968, she would have been entitled to publish the songs through a publisher of her own choosing. Acuff/Rose no longer would be the only authorized publisher and its substantial income from that catalogue would be cut in half. Williams, Jr.'s writer's share of the income also would be cut in half. Lest there be any doubt about their motives, one need only note how vigorously these Appellees fought the Aberbach Interests' claim for six years. *Hill & Range Songs, Inc. v. Fred Rose Music, Inc.*, 403 F.Supp. 420 (M.D. Tenn. 1975), *aff'd*, 570 F.2d 554 (6th Cir. 1978).

Berlin and the Aberbach Interests joined the conspiracy in 1973 when they learned of the custody/support agreement and agreed to conceal it's [sic] contents. [Opening Brief at 33-34]. Their reason for doing so was the same as Acuff/Rose's – to avoid sharing the income

with Appellant. Those who join a conspiracy are liable for all the acts in furtherance of the conspiracy, even those which occurred before they joined. *Killough v. State*, 438 So.2d 311 (Ala. Cr. App. 1982); *State v. Lequire*, 634 S.W.2d 608 (Tenn. Cr. App. 1981). Appellees conspired to deprive Appellant of her renewal rights even though they owed a fiduciary duty to her and held her share of the income in trust for her. *Shapiro, Bernstein & Co. v. Jerry Vogel Music Co.*, 221 F.2d 569 (2d Cir.), *modified*, 223 F.2d 252 (2d Cir. 1955).

This Court, like the Alabama Supreme Court, should refuse to reward Appellees' unconscionable conduct and reject their laches defense. As stated in *Holmberg v. Armbrecht*, 327 U.S. 392 (1946):

> "If want of due diligence by the plaintiff may make it unfair to pursue the defendant, fraudulent conduct by the defendant may have prevented the plaintiff from being diligent and may make it unfair to bar appeal to equity because of mere lapse of time.
>
> Equity will not lend itself to such fraud and historically has relieved from it. It bars a defendant from setting up such a fraudulent defense . . . . " 327 U.S. at 396-97.

In *McIntire v. Pryor*, 173 U.S. 38 (1899), the Supreme Court rejected a laches defense because the defendant had engaged in fraud which was as calculated and flagrant as found by the Alabama Court, stating:

> "in case of actual fraud, a delay, even greater than that permitted by the statute of limitations, is not fatal to the plaintiff's claim [and] where the fraud is clearly proven, the court will look with much more indulgence upon any disability

> under which the plaintiff may labor, as excusing his delay." 173 U.S. at 54, 59.

Had there been no fraud, the 1967-1968 rulings probably would have been different [Opinion at 24]. Appellant (and her adoptive parents) would have known Williams, Sr. had not abandoned her, that upon his death she was adopted by his mother, and that she had been placed for adoption by Smith for the latter's selfish motives.[1] Knowing of Williams, Jr.'s [sic] desires and Mrs. Stone's treating her as one of the family would have made Appellant and the Deuprees think very differently about pursuing her ancestry in 1967. At the very least, these issues must be tried.

Even if Appellees' fraud does not excuse Appellant's delay, it defeats the laches defense under the unclean hands doctrine. This doctrine is as strongly rooted in societal interests and public policy as is laches. As stated in *Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co.*, 324 U.S. 806 (1945):

> "That doctrine is rooted in the historical concept of [a] court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abetter of iniquity.' . . . Thus while 'equity does not demand that its suitors shall have led blameless lives,' . . . as to other matters, it does require that they shall have acted fairly and without fraud or deceit as to the controversy in issue.

---

[1] Smith's selfish motives extended to defeating Appellant's attempt to inherit under Mrs. Stone's will. *Hamilton v. Smith*, 86 So.2d 283 (Ala. 1956).

> " . . . Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim by the chancellor." 324 U.S. at 814-15.

A defendant's unclean hands defeats its laches defense. *Bott v. Four Star Corp.*, 807 F.2d 1567, 1576 (Fed. Cir. 1986); *TWM Mfg. Co. v. Dura Corp.*, 592 F.2d 346, 349 (6th Cir. 1979), *aff'd. after remand*, 722 F.2d 1261, 1268 (6th Cir. 1983); *National Circle, Daughters of Isabella v. National Order of Daughters of Isabella, 270 F. 723, 732-34 (2d Cir. 1920), cert. denied*, 255 U.S. 571 (1921); *Haas v. Leo Feist, Inc.*, 234 F. 105, 108 (S.D.N.Y. 1916). Appellees' fraud constitutes unclean hands and defeats their laches defense.

The defense should also fail because Appellees cannot establish any prejudice other than circumstances which their fraud produced. Had there been full disclosure in 1967 and 1968, the issues would have been adjudicated while the witnesses whose deaths this Court identified as a form of prejudice (873 F.2d at 625) were still alive. The "circumstances giving rise to this appeal [would not] have spanned over two decades" (*Id.*) without a resolution. To the extent there is support for the Court's conjecture that witness recollections had faded during 1981-1985 (*Id.*), those recollections undoubtedly would have been more vivid in 1968. To the extent Appellees entered into transactions "premised on the apparent certainty" of their ownership of the renewal rights by reason of the 1967-1968 rulings (*Id.* at 625-26),[2] that

---

[2] Appellant disputes this assumption. *See*, Petition for Rehearing at 6-10. There is no danger that innocent third parties

(Continued on following page)

apparent certainty was the product of calculated fraud. Appellees should not be able to claim prejudice from circumstances they created. *Kama Rippa Music, Inc. v. Schekeryk*, 510 F.2d 837, 843-44 (2d Cir. 1975); *National Circle, Daughters of Isabella v. National Order, Daughters of Isabella, supra*, 270 F. at 734.

Appellees had no reasonable basis to assume Appellant believed her renewal rights were worthless or had abandoned them, *Galliher v. Cadwell*, 146 U.S. 368, 372 (1892), for they had obtained through fraud orders that she had no such rights. Because of those orders, Mrs. Deupree told Appellant everything regarding her relationship to Williams, Sr. had been decided against her. 873 F.2d at 622. Appellees always have had the information necessary to determine Appellant's rights and could have filed an action to declare those rights at any time before 1981. This knowledge and ability to preserve relevant evidence by way of litigation defeats the claim of prejudice. *Hill v. W. Bruns & Co.*, 498 F.2d 565, 568-69 (2d Cir. 1974); *Vega v. The Malula*, 291 F.2d 415, 419-20 (5th Cir. 1961).[3]

(Continued from previous page)

will suffer if Appellant's rights are recognized. Licenses granted by one copyright owner are binding on all co-owners. *McKay v. Columbia Broadcasting Systems, Inc.*, 324 F.2d 762, 763 (2d Cir. 1963). Recognition of Appellant's status will not invalidate any of the licenses or in any way affect the licensees' rights thereunder.

[3] The Alabama Court's decision also disposes of Appellees' other defenses as a matter of law. The fraud tolls the statute of limitations until Appellant learned the contents of

(Continued on following page)

Finally, as this Court recognized, laches is found only where the prejudice proximately results from the delay. 873 F.2d at 625. Appellees concede they relied on the 1967-1968 rulings as having determined Appellant's status and rights adversely to her and those orders being *res judicata* or collateral estoppel in any claim she might later assert. [Joint Brief at 30]. In and after 1975, Appellees acted in reliance on those orders being final, not on Appellant's failure to claim her renewal copyright interests between 1981 and 1985 [*Id.*, Jt. App. 250a, 253a]. The Alabama Court has set those orders aside, rejecting the argument that Appellant's third-party claim for such relief was time-barred. [Opinion at 27-29]. Any economic detriment from now having to recognize Appellant's statutory rights[4] results from the 1967-1968 orders having been set aside in the Alabama litigation, not Appellant's failure to file this lawsuit before 1981. The necessary proximate cause is missing.

(Continued from previous page)

the custody/support agreement in 1984. *Holmberg v. Armbrecht, supra*. Even if the limitations period began earlier, Appellant is entitled to an accounting back to September 12, 1982. *Mount v. Book-of-the-Month Club, Inc.*, 555 F.2d 1108 (2d Cir. 1977). The fraud defeats Appellees' *res judicata* and collateral estoppel defenses [Opinion at 27]. That Appellant is an heir [*Id.* at 29-40] means, without more, that she owns an interest in those renewals governed by the 1909 Act. *DeSylva v. Ballentine*, 351 U.S. 570 (1956). That Appellant is a natural child means, without more, that she owns an interest in those renewals governed by the 1976 Act. 17 U.S.C. § 101. This Court can order a speedy and efficient resolution of this matter by remanding with directions to order the requested accounting without the need for further proceedings.

[4] Which is not prejudice for laches purposes. *In re Bohart*, 743 F.2d 313, 327 (5th Cir. 1984).

II. THE REHEARING SHOULD BE IN BANC

The rehearing should be in banc because this Court's decision conflicts with *Miller Music Corp. v. Charles N. Daniels, Inc.*, 362 U.S. 373 (1960), which held that an author's assignment does not eliminate his executor's renewal interest under § 24 of the 1909 Act because that interest belongs only to the executor. "The right to obtain a renewal copyright and the renewal copyright itself exist only by reason of the Act and are derived solely and directly from it." 362 U.S. at 375. The Court held it would be an impermissible judicial redesigning of the statute to eliminate the executor's Congressionally-granted renewal rights by applying the "usual rule" that an executor takes estate assets subject to the testator's prior contracts. *Id.* at 377.

This Court's decision does just that by adding a deadline for establishing renewal copyright ownership which is not in the statute and which will differ depending on how different courts view necessarily unique combinations of delay, excuses and prejudice.[5] Before this Court's decision, members of the specified classes became possessed of their interests automatically upon the occurrence of the statutorily-prescribed circumstances. *Miller Music*, 362 U.S. at 375-78. This Court's judicial legislation makes unpredictable what Congress sought to simplify and make certain by enacting the 1976 Act.

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[5] The laches deadline in this case was inserted by way of a summary judgment motion held under submission for 13 months and deprives Appellant of her statutory rights for the 37-43 years remaining in the renewals.

An additional reason for an in banc rehearing is that the decision conflicts with *Menendez v. Holt*, 128 U.S. 514 (1888) and *New Era Publications ApS v. Henry Holt & Co., Inc.*, 873 F.2d 576 (2d Cir. 1989) by applying laches to divest Appellant of her renewal rights rather than only denying her an accounting of the pre-complaint licensing of those rights. This conflict will generate confusion as to the parties' rights under the Alabama Court's decision, which establishes the factual prerequisites to Appellant's ownership of the renewals. Appellees will argue this Court's decision precludes Appellant from asserting such rights. The resulting uncertainty, not only between the parties but also in the public's mind because of the press reports of the conflicting decisions, will have to be settled in future litigation.

Appellant is prevented from presenting these arguments in greater detail by the page limit set in the August 24, 1989 order, and respectfully directs the Court's attention to pages 19-31 of her Petition for Writ of Certiorari filed on August 19, 1989. That Petition, excluding the Appendices, is attached hereto.

Dated: September 6, 1989

Respectfully submitted,

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ADDENDUM A

[Omitted, see App. F-1]

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 9601 Wilshire Boulevard, Suite 800, Beverly Hills, California 90210:

On September 6, 1989, I served the foregoing document described as follows: PETITION FOR REHEARING AND SUGGESTION FOR REHEARING IN BANC on the interested parties in this action by placing two true copies thereof enclosed in three separate sealed envelopes with postage thereon fully prepaid in the United States Mail at Beverly Hills, California, each labeled with one of the following addresses:

SEE ATTACHED SERVICE LIST

I declare that I am employed in the office of an attorney who is a member of the bar of this Court at whose direction the service was made.

/s/ Christine H. Anderson
Christine H. Anderson

Subscribed to and sworn before me
on this 6th day of September, 1989.

/s/ Helen Montrose
Notary Public

OFFICIAL SEAL
HELEN MONTROSE
Notary Public - California
Los Angeles County

(SEAL)

My Comm. Exp. Apr. 23, 1991

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APPENDIX H-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CATHY YVONNE STONE, an individual,	CASE NO. 85 Civ. 7133
Plaintiff,	THIRD AMENDED COMPLAINT FOR (1)
vs.	DECLARATORY RELIEF,
HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a division of CHAPPELL & CO., INC., a Delaware corporation, ABERBACH ENTERPRISES, LTD., a New York corporation, ACUFF-ROSE-OPRYLAND MUSIC, INC., a Tennessee corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee corporation, WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee corporation, and MILENE MUSIC, INC., a Tennessee corporation,	ACCOUNTING, DAMAGES, IMPOSITION OF CONSTRUCTIVE TRUST AND/OR A RESULTING TRUST, AND (2) CONSPIRACY TO DEFRAUD AND BREACH FIDUCIARY DUTY
Defendants.	DEMAND FOR JURY TRIAL

Plaintiff alleges as follows:

PARTIES

1. Plaintiff Cathy Yvonne Stone is a citizen of the State of Maryland.

2. Plaintiff is informed and believes and based thereon alleges that defendant Hank Williams, Jr. (hereinafter "Williams Jr.") is, and at all times herein relevant was, a citizen of the State of Alabama.

3. Plaintiff is informed and believes and based thereon alleges that defendant Billie Jean Williams Berlin (hereinafter "Berlin") is, and at all times herein relvant [sic] was, a citizen of the State of Louisiana.

4. Plaintiff is informed and believes and based thereon alleges that Chappell Music Company, a division of Chappell & Co., Inc. (hereinafter "Chappell"), is a corporation incorporated under the laws of the State of Delaware having its principal place of business in New York, New York. Plaintiff is informed and believes and based thereon alleges that defendant Aberbach Enterprises, Ltd. (hereinafter "Aberbach") is a corporation incorporated under the laws of the State of New York, having its principal place of business in New York, New York. Both Aberbach and Chappell have, at all times relevant hereto, been engaged in the business of music publishing.

5. Plaintiff is informed and believes and based thereon alleges that defendants Acuff-Rose-Opryland

Music, Inc. (hereinafter "ARO Music") and Milene-Opryland Music, Inc. (hereinafter "MOM Music") are corporations organized under the laws of the State of Tennessee, doing business in New York, New York, and are, and at all times hereto relevant have been, in the business of music publishing.

6. Plaintiff is informed and believes and based thereon alleges that defendant Wesley H. Rose (hereinafter "Rose") is, and at all times herein relevant was, a citizen of the State of Tennessee.

7. Plaintiff is informed and believes and based thereon alleges that defendant Roy Acuff (hereinafter "Acuff") is, and at all times herein relevant was, a citizen of the State of Tennessee.

8. Plaintiff is informed and believes and based thereon alleges that Fred Rose Music, Inc. (hereinafter "Fred Rose") was at all times herein relevant a corporation incorporated under the laws of the State of Tennessee, having its principal place of business in Tennessee.

9. Plaintiff is informed and believes and based thereon alleges that defendant Milene Music, Inc. (hereinafter "Milene") was at all times herein relevant a corporation incorporated under the laws of the State of Tennessee, having its principal place of business in Tennessee.

10. Plaintiff is informed and believes and based thereon alleges that individual defendants Rose and Acuff are the Trustees in Liquidation for stockholders of Fred Rose and Milene, which claim to have heretofore acquired renewal rights in musical compositions and

works written and/or composed by Hiriam "Hank" Williams (hereinafter "Williams Sr.").

11. Plaintiff is informed and believes and based thereon alleges that at all times herein relevant each defendant was and is acting as the agent of each other.

JURISDICTION AND VENUE

12. This court has jurisdiction over plaintiff's first claim for relief as alleged herein because such claim arises under the copyright laws of the United States, and more particularly, the Copyright Act of 1976, 17 U.S.C. §§101, *et seq.*

13. This court has jurisdiction over plaintiff's first and second claims for relief pursuant to the provisions of Title 28, United States Code, §1332(a)(2), providing jurisdiction in this court to hear and decide matters between parties of diverse citizenship where the amount in controversy exceeds the sum of $10,000.00, exclusive of interest and costs.

14. This court has jurisdiction over plaintiff's second claim for relief because it results from the transactions and occurrences which form the basis of plaintiff's first claim for relief and this court therefore has ancillary and/or pendant jurisdiction over the second claim for relief.

15. Plaintiff is informed and believes and based thereon alleges that corporate defendants Chappell, Aberbach, ARO Music, MOM Music, Milene and Fred Rose, and Acuff and Rose in their individual capacities and as Trustees in Liquidation for stockholders of Fred

Rose and Milene, have continuously and systematically conducted substantial and extensive business within this judicial district. Plaintiff is informed and believes and based thereon alleges that individual defendants Berlin and Williams Jr. have continuously and systematically done business in the State of New York and within this judicial district through their agents, Aberbach, Chappell, ARO Music, and MOM Music, respectively, in that, among other things, Aberbach, Chappell, ARO Music and MOM Music pay Williams Jr. and Berlin royalties and other compensation derived from their respective interests in the renewal copyrights which, as alleged more fully hereinbelow, are the subject of plaintiff's complaint. Plaintiff's cause of action therefore arises out of the contacts and transaction of business in New York by defendants, and each of them.

16. Defendants, and each of them, may be found in this judicial district as a result of, among other things, the transaction of business alleged hereinabove at paragraph 15, and venue is properly laid in the United States District Court, Southern District of New York, pursuant to 28 U.S.C. §1400(a).

FIRST CLAIM FOR RELIEF FOR DECLARATION OF RIGHTS, ACCOUNTING, DAMAGES, AND IMPOSITION OF CONSTRUCTIVE TRUST AND/OR RESULTING TRUST

17. Plaintiff incorporates herein by reference each and every allegation contained in paragraphs 1 through 16 of this Third Amended Complaint as though fully set forth herein.

18. Plaintiff is the natural daughter of Williams Sr. and Bobbie Jett (hereinafter "Jett"). Plaintiff's natural father, Williams Sr., died five days before plaintiff was born and plaintiff never knew her natural mother, Jett. Plaintiff was twice adopted as an infant and the identity of her natural parents had been actively concealed from plaintiff. Plaintiff discovered, within less than three years last past, sufficient facts and information to enable her to commence this action for declaratory relief, accounting, damages, and imposition of constructive and/or resulting trust, and plaintiff could not, prior to that time, through reasonable diligence, have discovered the facts or information necessary to commence this action.

19. Plaintiff is informed and believes and based thereon alleges that defendants Berlin, as widow of Williams Sr., and Williams Jr., as alleged son of Williams Sr., claim to be the only persons in whom the relevant United States Copyright Acts vest the right to renew the copyrights to all musical compositions which were written in whole or in part by Williams Sr. Plaintiff is informed and believes and based theron [sic] alleges that claims of copyright registration have been recorded with the Register of Copyrights in the names of Berlin and Williams Jr. and/or their respective transferees with respect to the renewal copyrights to all musical compositions which were written in whole or in part by Williams Sr.

20. Plaintiff is informed and believes and based thereon alleges that defendants Aberbach, Chappell, ARO Music, and MOM Music claim to have received assignments, or otherwise claim to be the successors in interest to those who have received the assignments, from Berlin

and Williams Jr. of all the renewal copyrights to all musical compositions which were written in whole or in part by Williams Sr. Plaintiff is informed and believes that Chappell, Aberbach, ARO Music and MOM Music, or their predecessors in interest, have recorded such assignments with the Register of Copyrights.

21. Plaintiff has notified defendants, and each of them, that she is the natural daughter of Williams Sr., and the equitable owner of no less than an undivided 33 1/3% interest in all renewal copyrights to all musical compositions written in whole or in part by Williams Sr. renewed under either the Copyright Act of 1909 or the Copyright Act of 1976. These renewal copyrights include, but are not limited to, the musical compositions identified in Exhibit 1 attached hereto and fully incorporated herein by this reference.

22. All defendants deny the claims of plaintiff as set forth in paragraph 21 hereinabove and plaintiff is informed and believes that defendants, rely, in part, in their denial, on an order of the Circuit Court of Montgomery County, Alabama, Case No. 27960 entitled *In the Matter of the Guardianship Estate of Randall Hank Williams, a Minor.* A true and correct copy of that order is attached hereto and fully incorporated herein as Exhibit 2. Plaintiff is informed and believes that defendants, and each of them; contend that such order purports to prohibit plaintiff from obtaining any interest in and to the Williams Sr. copyrights under the federal copyright law.

23. To the extent Exhibit 2 purports to in any manner govern the renewal rights of plaintiff in the musical compositions written in whole or in part by Williams Sr.,

it is, and has been since the day it was entered, a legal nullity without any force or effect because, among other reasons: (1) The Circuit Court of Montgomery Alabama did not have subject matter jurisdiction to determine whether plaintiff had any rights, whether vested or contingent, to the renewal rights to the United States copyrights to the musical compositions written in whole or in part by Williams Sr.; (2) Plaintiff was at the time of such hearing a 15 year old minor, and did not receive proper notice, and was not properly or competently represented in connection with the proceedings which preceded the entry of such order or in connection with the subsequent proceedings with respect to such order since, among other things, no appeal was taken from that order even though grounds for appeal clearly existed; (3) The purported determination of plaintiff's rights under the Copyright Act, whether vested or contingent, were entirely unnecessary to the issues which were properly submitted to the court, i.e., whether or not a contract previously executed in favor of defendant ARO Music's predecessors-in-interest was valid and binding, and such order therefore has no *collateral estoppel* or *res judicata* effect on plaintiff; (4) The copyright law has been specifically amended by the Copyright Revision Act of 1976, effective as of January 1, 1978, to provide that plaintiff, as the natural daughter of Williams Sr., is entitled to an undivided ownership interest in and to the renewal copyrights which include, but are not limited to, those musical compositions identified in Exhibit 1; and (5) Exhibit 2 was entered in furtherance of an unlawful conspiracy perpetrated on plaintiff by defendants Rose, Acuff, Fred Rose,

Milene, ARO Music and MOM Music, as more specifically alleged herein in plaintiff's second claim for relief.

24. Plaintiff contends that:

(a) Plaintiff is the natural daughter of Williams Sr.;

(b) Plaintiff is, and has at all times been, the equitable owner of and is entitled to not less than an undivided 33 1/3% interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of 1909;

(c) Plaintiff is, and has at all times been, the equitable owner of and is entitled to not less than an undivided 33 1/3% interest in all renewal copyrights to all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of 1976;

(d) Plaintiff is entitled to her appropriate ownership interest in all foreign copyrights of all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of either 1909 or 1976;

(e) Plaintiff is entitled to receive from defendants, and each of them, an immediate accounting of all royalties, revenue, income, monies, and other consideration, derived directly or indirectly from the exploitation, whether domestically or foreign, of all musical compositions written in whole or in part by Williams Sr.; that she should be forthwith paid all monies or other compensation owed to her pursuant to her undivided ownership interest in said Williams Sr. compositions; and that she is

entitled to a continuing accounting for the full term of renewal of copyrights throughout the world and to her appropriate share of said copyrights and all such monies and compensation;

(f) The order attached hereto as Exhibit 2 is null and void to the extent it purports to affect or impact any of the rights of plaintiff whatsoever and/or to the extent it purports to affect or impact any of plaintiff's interests in the renewal copyrights to the musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of either the Copyright Act of 1909 or the Copyright Act of 1976;

(g) Plaintiff be awarded her proportionate entitlement to all copyrights to which she is entitled as the natural daughter of Williams Sr.; and

(h) Defendants be ordered to convey to plaintiff legal title to her proportionate share of the renewal rights, or other rights, to the United States copyrights in and to the musical compositions written in whole or in part by Williams Sr., and that defendants be ordered to execute all documents necessary to effectuate the recordation and/or registration in the United States Copyright Office, of plaintiff's interests in such renewal or other copyrights.

25. Defendants, and each of them, dispute plaintiff's contentions and contend that plaintiff has no equitable, legal or other ownership interest in the renewal copyrights in any musical compositions written in whole or in part by Williams Sr., including, but not limited to, those alleged hereinabove at paragraph 21, that the order

attached hereto as Exhibit 2 is valid and binding as to plaintiff, and that no accounting need be rendered.

26. An actual controversy therefore exists between plaintiff and defendants, and each of them, pursuant to 28 U.S.C. §2201, and plaintiff desires a judicial determination of her rights and, in particular, a declaration that:

(a) Plaintiff is the natural daughter of Williams Sr.; (b) Plaintiff is and has been the true legal owner of her interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. since the commencement of the respective United States copyright renewal terms, and is entitled to not less than an undivided 33 1/3% interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of 1909;

(c) Plaintiff is and has been the true legal owner of her interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. since the commencement of the respective United States copyright renewal terms, and is entitled to not less than an undivided 33 1/3% interest in all renewal copyrights to all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of 1976;

(d) Plaintiff is entitled to her appropriate ownership interest in all foreign exploitation of all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of either 1909 or 1976;

(e) Defendants, and each of them, render an immediate accounting of all royalties, revenue, income, monies and other consideration, derived directly or indirectly, whether domestically or foreign, from the exploitation of all musical compositions written in whole or in part by Williams Sr., and that plaintiff be forthwith paid all monies or other compensation owed to her pursuant to her undivided ownership interest in said Williams Sr. compositions and to continue to account to plaintiff with respect to said monies and compensation;

(f) The order attached hereto as Exhibit 2 is null and void to the extent it purports to affect or impact any of the rights of plaintiff whatsoever and/or to the extent it purports to affect or impact any of plaintiff's interests in the renewal copyrights to the musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of either the Copyright Act of 1909 or the Copyright Act of 1976;

(g) Plaintiff be awarded her proportionate entitlement to all copyrights to which she is entitled as the natural daughter of Williams Sr.; and

(h) Defendants convey to plaintiff legal title to her proportionate share of the renewal rights, or other rights, to the United States copyrights in and to the musical compositions written in whole or in part by Williams Sr., and that defendants be ordered to execute all documents necessary to effectuate the recordation and/or registration in the United States Copyright Office, of plaintiff's interests in such renewal or other copyrights.

27. Plaintiff has further been damaged as a result of the acts of defendants, and each of them, in an amount in

excess of $10,000.00, but not yet ascertainable. Plaintiff prays for leave to amend this Complaint at the time of trial to set forth the amount of the damages suffered according to proof.

28. Plaintiff has no adequate remedy at law and prays that a constructive or resulting trust be imposed and all money or other consideration received from her equitable interest in the foregoing renewal copyrights to the Williams Sr. musical compositions be paid into court and held in trust pending the determination of this action in order to avoid the perpetration of a fraud upon her and the unjust enrichment of defendants, and each of them.

29. 17 U.S.C. §505 states as follows:

> "In any civil action under this title, the court in its discretion may allow the recovery of full costs or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs."

Plaintiff has had to retain the services of an attorney to prosecute this action and prays that she be given leave to amend this Complaint to set forth the full amount of fees incurred at the trial or the conclusion of this action.

SECOND CLAIM FOR RELIEF AGAINST ARO MUSIC, MOM MUSIC, ROSE, ACUFF, FRED ROSE, AND MILENE FOR CONSPIRACY TO DEFRAUD AND BREACH FIDUCIARY DUTY

30. Plaintiff incorporates herein by reference each and every allegation contained in paragraphs 1 through

16 and 18 through 20 of the Third Amended Complaint as though fully set forth herein.

31. Robert B. Stewart (hereinafter "Stewart") was at all times herein relevant an attorney licensed to practice law in the State of Alabama and from in or about 1953 through in or about August, 1975, he acted as attorney for the estate of Hiriam "Hank" Williams (hereinafter "the estate").

32. The estate was initially administered by Williams Sr.'s mother, Lillian Williams Stone, until her death in or about 1955. At that time, the administratrix's responsibilities were purportedly assumed by her daughter, and Williams Sr.'s sister, Irene Smith (hereinafter "Smith"). Smith continued to act as administratrix of the estate until in or about 1969 when she resigned as administratrix because she was convicted for cocaine smuggling in Laredo, Texas. At that time, Stewart assumed responsibility as administrator of the estate and continued as attorney for the estate.

33. Smith and Stewart knew of plaintiff since her birth on January 6, 1953 and knew, since that time, that she had claims and rights as the natural child of Williams Sr. While acting in their respective capacities as administrator and/or attorney for the estate, Smith and Stewart had a confidential relationship with plaintiff; they were charged with the highest degree of fiduciary duty to plaintiff; they were obligated to fully advise her or her appropriate representatives of all material facts and theories which could affect her claims, rights and interests arising from the fact that she is the natural daughter of Williams Sr.; they were required to to take whatever

measures were necessary to protect her interest; and they were prohibited from placing the interest of another potential heir over her interest.

34. At all times alleged herein, defendants ARO Music, MOM Music, Rose, Acuff, Fred Rose and Milene (hereinafter "Co-conspirator Defendants"), knew or had reason to know that plaintiff was the natural daughter of Williams Sr. and Williams Jr.'s half-sister, that Smith and Stewart were the administrators and/or the attorney for the estate, that Smith and Stewart had a confidential and fiduciary relationship with plaintiff and that Smith and Stewart were charged with the highest degree of fiduciary duty to plaintiff.

35. Co-conspirator Defendants, Smith and Stewart knew, or had reason to know, that the Alabama state Court, in making determinations regarding the estate, would depend in great measure on the integrity and thoroughness of Stewart and would depend on the facts and issues presented to the Court by Stewart.

36. Commencing at some time in at least 1960 or 1961, and continuing thereafter as more specifically alleged hereinbelow, and with full knowledge of the facts alleged hereinabove at paragraphs 31, 32, 33 and 35, Co-conspirator Defendants, Smith and Stewart knowingly and willfully conspired and agreed among themselves, and each of them, to unlawfully exploit and misuse Stewart and Smith's fiduciary relationship with plaintiff to (1) prevent plaintiff from perfecting her interest in the Williams Sr. renewal copyrights and (2) to permit Co-conspirator Defendants to misappropriate plaintiff's interest

in the Williams Sr. renewal copyrights for their sole and exclusive benefit.

37. The specific overt acts which constitute the conspiracy alleged hereinabove include, but are not limited to, the following:

(a) Stewart and Co-conspirator Defendants' agent met (i) in New York City sometime in between May 10, 1960 and February 16, 1962; (ii) in San Francisco, California sometime between July 24, 1962 and September, 1962, and (iii) in Nashville, Tennessee sometime in September, October or November, 1962, all in furtherance of the conspiracy alleged hereinabove.

(b) Co-conspirator Defendants' agents and Stewart communicated in writing and provided each other documents and information in furtherance of the conspiracy on or about February 8, 1960, February 18, 1960, March 16, 1960, February 16, 1962, February 28, 1962, April 27, 1962, May 1, 1962, and July 5, 1962.

(c) The foregoing written communications and meetings were, in whole or in part, to create a scheme to enable Co-conspirator Defendants to permanently divest plaintiff of her interest in the Williams Sr. renewal copyrights through a "token" or "nominal" payment without her knowledge and/or to conceal and suppress plaintiff's existence and interest in the Williams Sr. renewal copyrights from plaintiff and from the Alabama state Court.

(d) Co-conspirator Defendants, Smith and Stewart elected to conceal plaintiff's existence and her interest in the Williams Sr. renewal copyrights from plaintiff and the Alabama state Court. This concealment and suppression

of material facts from the Alabama state Court continued until in or about March, 1967 when Williams Jr. and his mother, Audrey Mae Williams (hereinafter "Audrey"), filed an action against Smith to terminate the estate and to rescind a contract executed by Smith in or about 1963 which purportedly sold Williams Jr.'s interest in the Williams Sr. renewal copyrights to Co-conspirator Defendants. This action filed by Audrey and Williams Jr. disclosed to the Alabama state Court, for the first time, the existence of plaintiff and her interest in, in part, the Williams Sr. renewal copyrights.

(e) In furtherance of the conspiracy, Co-conspirator Defendants, Stewart and Smith created a scheme to prematurely divest plaintiff of her rights in the Williams Sr. renewal copyrights (i) before she reached the age of majority and could learn of and perfect her interest in the Williams Sr. renewal copyrights, and (ii) before pending amendments to the United States copyright laws specifically granting rights to illegitimates would be enacted, the pendancy of which was expressly known by Co-conspirator Defendants, Stewart and Smith.

(f) In furtherance of the conspiracy, Smith, Stewart and Co-conspirator Defendants arranged, in or about May, 1967 (i) for the appointment of the guardian ad litem of their choice to purportedly represent plaintiff's interest in the Williams Sr. renewal copyrights, (ii) for her interest to purportedly be decided in state, not federal court, despite the fact that they knew that the federal courts had exclusive jurisdiction and expertise over the subject matter, and (iii) to have plaintiff's interest in the

Williams Sr. renewal copyrights determined in a proceeding initiated by Williams Jr. and Audrey which was entirely unrelated to plaintiff's contingent interest in the Williams Sr. renewal copyrights.

(g) As a result of the manipulation and conspiracy alleged hereinabove, the Alabama state Court entered, on or about January 30, 1968, the order attached hereto as Exhibit 2 which purports to affect plaintiff's rights.

(h) Co-conspirator Defendants, Smith and Stewart knew, or had reason to believe, at all times relevant hereto, that, under existing Alabama law, plaintiff would be entitled, within one year after her twenty-first birthday, on January 6, 1974, to file appropriate legal action to set aside the order attached hereto as Exhibit 2, or to set aside any order entered before her twenty-first birthday which purported to affect her rights.

(i) Stewart and Co-conspirator Defendants' agent communicated in writing, in part, on November 1, 1973, April 4, 1974, and April 11, 1974 to suppress and conceal relevant facts and information from plaintiff, both before and after she reached the age of majority. The estate was closed in or about August, 1975 and Stewart, in furtherance of the conspiracy, and contrary to his fiduciary obligations, failed to advise plaintiff or any of her representatives of any pertinent facts, theories, or of any rights or claims she may have either before or after she reached the age of majority.

38. Co-conspirator Defendants ARO Music, MOM Music, Acuff, Rose, Milene and Fred Rose, did the acts and things herein alleged in furtherance of the conspiracy

and above-alleged agreement between said Co-conspirator Defendants on the one hand, and Stewart and Smith on the other hand.

39. As a proximate result of the wrongful acts herein alleged, plaintiff has not received any income from her interest in the Hank Williams, Sr. renewal copyrights and has, as a result thereof, been damaged in a sum that is not yet ascertainable but in excess of $10,000.00.

40. As a proximate result of the wrongful acts herein alleged, plaintiff has been generally damaged in a sum that is not yet ascertainable, but in excess of $10,000.00.

41. The acts of Co-conspirator Defendants Acuff, Rose, Fred Rose, Milene, ARO Music and MOM Music alleged herein, were done knowingly, maliciously, and oppressively, and plaintiff is therefore entitled to punitive and/or exemplary damages in the sum of at least $10,000,000.00.

WHEREFORE, plaintiff prays for judgment as follows:

ON THE FIRST CLAIM FOR RELIEF

1. For declaratory judgment that:

(a) Plaintiff is the natural daughter of Williams Sr.;

(b) Plaintiff is and has been the true legal owner of her interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. since the commencement of the respective United States copyright renewal terms, and is entitled to

not less than an undivided 33 1/3% interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. and renewed pursuant to the provisions of the Copyright Act of 1909;

(c) Plaintiff is and has been the true legal owner of her interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. since the commencement of the respective United States copyright renewal terms, and is entitled to not less than an undivided 33 1/3% interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of 1976;

(d) Plaintiff is entitled to her appropriate ownership interest in all foreign exploitation of all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of either 1909 or 1976;

(e) Defendants, and each of them, render an immediate accounting of all royalties, revenue, income, monies, and other consideration, derived directly or indirectly, whether domestically or foreign, from the exploitation of all musical compositions written in whole or in part by Williams Sr. and that plaintiff be forthwith paid all monies or other compensation owed to her pursuant to her undivided ownership interest in said Williams Sr. compositions and continue to so account to plaintiff;

(f) The order attached hereto as Exhibit 2 is null and void to the extent it purports to affect or impact any of the rights of plaintiff whatsoever and/or to the extent it purports to affect or impact any of plaintiff's interests

in the renewal copyrights to the musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of either the Copyright Act of 1909 or the Copyright Act of 1976;

(g) Plaintiff be awarded her proportionate entitlement to all copyrights to which she is entitled as the natural daughter of Williams Sr.; and

(h) Defendants convey to plaintiff legal title to her proportionate share of the renewal rights, or other rights, to the United States copyrights in and to the musical compositions written in whole or in part by Williams Sr., and that defendants be ordered to execute all documents necessary to effectuate the recordation and/or registration in the United States Copyright Office, of plaintiff's interests in such renewal or other copyrights.

2. For damages according to proof at trial;

3. For the imposition of a constructive or resulting trust on all monies derived by defendants from plaintiff's equitable interest in all renewal copyrights to all musical compositions written in whole or in part by Williams Sr.;

ON THE SECOND CLAIM FOR RELIEF

4. For damages according to proof at trial;

5. For exemplary damages according to proof at trial but in the sum of at least $10,000,000.00;

ON ALL CLAIMS FOR RELIEF

4. For reasonable attorneys' fees;

5. For costs of suit herein incurred; and

6. For such other and further relief as this court deems just and proper.

Dated: Beverly Hills, California

September 26, 1986

RUDIN, RICHMAN & APPEL
A Professional Corporation
VINCENT H. CHIEFFO
JAMES A. GOODMAN

By: /s/ James Goodman
James A. Goodman
9601 Wilshire Boulevard
Penthouse
Beverly Hills, California 90210

COBLENCE & WARNER
Marjorie Smith
1370 Avenue of the Americas
New York, New York 10019

F. Keith Adkinson
1312 Eighteenth Street, N.W.
Washington, D.C. 20036

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: Beverly Hills, California

September 26, 1986

H-1.23

RUDIN, RICHMAN & APPEL
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1312 Eighteenth Street, N.W.
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Attorneys for Plaintiff

APPENDIX I-1

THE STATE OF ALABAMA - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1988-89

Catherine Yvonne Stone

87-269

v.

Gulf American Fire and Casualty Co., et al.

Appeal from Montgomery Circuit Court

(CV-85-1316-K)

(Released July 5, 1989)

MADDOX, JUSTICE.

This appeal involves the estate of the late Hiriam "Hank" Williams and concerns the rights of Catherine Yvonne Stone, an illegitimate child who, in 1985, was declared by the trial court in this proceeding to be the natural child of Hank Williams, and the major questions presented are whether two final judgments entered in 1967 and 1968, which determined that Stone had no rights to share in the estate, can be reopened because of an alleged "legal fraud."

Stone appeals from a summary judgment against her third-party complaint, in which she asked that the two former judgments be set aside, which judgments had been entered in favor of third-party defendants Irene Smith; Jones, Murray and Stewart, P.C.; Gulf American Fire and Casualty Company; American States Insurance

Company (as successor in interest of Gulf American); and several fictitiously named parties.[1]

This case began as an action for declaratory judgment filed by Randall Hank Williams (hereinafter "Williams, Jr."), along with Roy Acuff and Wesley Rose, the trustees in liquidation of Fred Rose Music, Inc., and of Milene Music, Inc., seeking a declaration that Stone was barred from establishing that she is the natural child of Hank Williams and from asserting any claim or entitlement to his estate or to any interest or royalties flowing therefrom.[2] Stone filed a counterclaim on these issues, and, in

---

[1] Irene Smith and Robert Stewart were the administratrix and administrator of the Williams estate, and Gulf American wrote the bond. The estate of Robert B. Stewart was dismissed as a third-party defendant by Stone on March 25, 1987.

[2] In their complaint for declaratory judgment, they asked for the following relief:

> "2. That this Court enforce and uphold in every respect the prior Orders and Judgments of this Court in Civil Action Nos. 25,056 and 27,960, declare them valid and binding upon the parties hereto, and enjoin Catherine Yvonne Stone from making further claims and demands relative to the estate of Hiriam "Hank" Williams or the aforesaid copyright interests or renewals thereof.
>
> "3. That in the event this Court alters, modifies or otherwise changes the prior Orders and Judgments in Action Nos. 25,056 and 27,960 that this Court proceed to adjudicate and determine the rights of the parties hereto with regard to the Estate of Hiriam Hank Williams and the copyright and renewal copyright interests of the musical compositions of Hiriam 'Hank' Williams.

(Continued on following page)

addition, the third-party complaint that now constitutes the basis of this appeal.

In her third-party complaint, Stone alleged an intentional, willful, fraudulent, and conspiratorial concealment from the court of her identity and potential claim to the estate of Hank Williams.[3] She requested that the estate be reopened and that she receive her proportionate share of the estate,[4] that she be awarded punitive damages, and that the sureties for the estate, Gulf American and American States, compensate her for damages not recovered against the other third-party defendants or real parties in interest.

(Continued from previous page)

"4. That this Court will grant to the Plaintiffs such other, further and different appropriate relief to which they may be entitled."

[3] In her first claim for relief in her third-party complaint Stone named Smith, Stewart, and several fictitiously named real parties in interest and alleged, inter alia, that "[f]rom in or about 1953 through sometime in 1967, Smith, Stewart and [Jones, Murray and Stewart], through Stewart, and real parties in interest C, D, E, F, G, H, I, J, K, M, and N, intentionally, willfully and fraudulently concealed Stone's identity, existence, claim, and rights as [*a*] natural child of Hank Williams, Sr. from the Montgomery County Circuit Court in contravention of their respective fiduciary obligations to Stone and in contravention of their respective obligations to the court."

[4] Stone's first claim for relief requested the following:

"1. That the estate of Williams, Sr. be reopened and all orders purportedly governing Stone's rights in that estate be declared null and void.

"2. That Stone be entitled to share her proportionate interest in all property and income of the estate."

In the proceedings below, the trial court entered summary judgment in favor of Williams, Jr., Acuff, and Rose on all issues contained in their original complaint and in Stone's counterclaim, with the exception of the issue of Stone's paternity, which it reserved for trial, and the trial court entered summary judgment in favor of all third-party defendants, including those fictitiously named, on Stone's third-party complaint, in which she asked, among other things, that the estate be reopened because of legal fraud. After a trial on the issue of paternity, the court found that Catherine Yvonne Stone is the natural child of Hank Williams. No appeal was taken from this judgment of paternity, and this finding is undisputed on appeal.[5]

Statement of the Facts

An understanding of the unique facts underlying this action is requisite to an understanding of this case, and it is because of these unique facts that we fashion the relief we do in this case. The trial judge entered a lengthy order in which he detailed the facts. We could include those findings, which we find to be supported by the record, in this opinion, but we think that a summary of those facts will be sufficient.

On October 15, 1952, Hank Williams entered into an agreement with Bobbie W. Jett relative to the custody and support of an unborn child carried by Jett. The agreement was prepared by and executed in the presence of Robert

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[5] Stone did not appeal the adverse ruling on her counterclaim either. We will discuss that issue in this opinion under the section "Relief Granted" *infra*.

B. Stewart, an attorney in the general practice of law in Montgomery, Alabama, who was one of the third-party defendants. The agreement provided, in part, as follows:

> "This agreement made this 15th day of October, 1952, by and between Hank Williams of Montgomery, Alabama, and Bobbie W. Jett of Nashville, Tennessee,
>
> "WITNESSETH
>
> "WHEREAS, the said Bobbie W. Jett is at the present time pregnant and expects to be delivered of a child on or about the 1st day of January, 1953, and the said Hank Williams may be the father of said child, and,
>
> "WHEREAS, it is the mutual desire of both parties to provide for the necessary expenses of the said Bobbie W. Jett and of the child to be born,
>
> "IT IS NOW, THEREFORE, mutually agreed by and between the said Bobbie W. Jett and the said Hank Williams as follows:
>
> " . . . That the said Hank Williams will provide room and board for the said Bobbie W. Jett in Montgomery, Alabama, from October 15th until the date said child is born . . . .
>
> " . . . That said Hank Williams shall pay all doctors and hospital bills in connection with the confinement of the mother and birth of the child . . . .
>
> " . . . Within 30 days after the birth of said child, the said Hank Williams shall provide a one-way plane ticket to the said Bobbie W. Jett from Montgomery to another place in California which she may designate . . . .

" . . . After the birth of said child, both parties agree that it shall be placed with Mrs. W. W. Stone of Montgomery [Hank Williams's mother], and that she shall have full custody and control of said child for a period of two years after its birth and that during said time the said Hank Williams will provide and pay for a nurse and will pay all necessary expenses for clothing, food, medical care, and other attention which is required by the child during said two year period. During said two year period that the child is in custody of Mrs. Stone, both the *father*, Hank Williams, and the said Bobbie W. Jett shall have the right to visit said child at convenient and reasonable hours. *Beginning at the third birthday of said child, its custody and control shall vest in the said Hank Williams and the child shall live with him continuously and be wholly and completely supported . . . by him, and cared for by him until it reaches its fifth birthday at which time the custody of the child shall be divided between both parties, that is, during the winter months or school months the child shall remain with Hank Williams and during the summer months or school vacation months the custody shall be in the mother. The responsibility for the support of said child shall be in Hank Williams both during the times when he has custody of the child and when it is visiting with the mother.* During the time that the child is in the custody of the *father*, Hank Williams, the mother shall have the right to visit it at reasonable times, and at reasonable hours, and during the time it is in the custody of the mother during the summer months the *father* shall have the same privilege of visitation.

> " . . . In view of the fact that the paternity of said child is in doubt and is not to be in any way construed as admitted by the agreement which is made solely because of the possibility of paternity, the said Bobbie W. Jett does hereby release the said Hank Williams from any and all further claims arising out of her condition or the birth of said child.
>
> "IN WITNESS WHEREOF, the parties have hereunto set their hands and on the day and date first above written.
>
> "/s/ _____
> "Bobbie W. Jett
>
> "/s/ _____
> "Hank Williams"

(Emphasis added).

On January 1, 1953, Hank Williams died intestate. Five days later, Bobbie Jett gave birth to a baby girl; she named the child Antha Bell Jett. By agreement, the child was left with Hank Williams's mother, Mrs. Lillian Williams Stone, and Jett left the state. Mrs. Stone immediately instituted adoption proceedings, and a final decree of adoption was entered on December 23, 1954. The child's name was changed to Catherine Yvonne Stone.

Shortly thereafter, on February 26, 1955, Lillian Stone died. Other family members were either unable or unwilling to care for the child, and, thus, at the age of two, she became a ward of the State. The child remained in foster homes until she was eventually adopted on April 23, 1959, at the age of six, by a Mobile couple,

George and Mary Deupree. Her name was then changed to Cathy Louise Deupree.

In that year, an action was brought on behalf of Williams, Jr., to obtain court approval of a contract between Fred Rose Music, Inc., and Williams, Jr., concerning his interest in the copyright renewals of his father. The matter of the Stone child was not raised in that proceeding, even though the record now before us shows that the parties to that contract knew of the agreement executed by Williams, Sr., and also that the State of Alabama, by and through its Department of Pensions and Security, knew of her parentage. Then, in 1967, Audrey Williams,[6] the mother of Williams, Jr., filed a petition in Montgomery Circuit Court for final settlement of the estate. She also instituted related proceedings in 1968, concerning the guardianship estate of Williams, Jr. At the time of the 1967 and 1968 proceedings, Irene Smith, the sister of Hank Williams, was the administratrix of the estate. It was in Smith's answer to Audrey Williams's petition that the court was advised, apparently for the first time, of the existence of the agreement and of the potential claim of the Stone child. In both the 1967 and the 1968 proceedings, the court appointed Drayton Hamilton, a Montgomery attorney, to serve as the child's guardian ad litem. Hamilton had previously served as her guardian ad litem in 1963 in proceedings relating to the estate of Lillian Stone; however, the record shows that in 1963, Hamilton knew only that Stone was an adopted child of Lillian Stone *and was not aware of her natural parentage.*

---

[6] Audrey Williams and Hank Williams divorced in 1952.

During 1967 and 1968, Stone lived in Mobile with her adoptive parents. Hamilton notified the Deuprees of the proceedings, but they refused to participate in any matters involving the child's natural father. Despite the Deuprees' adverse position, Hamilton continued to represent the child and actively attempted to establish her rights. Even so, on December 1, 1967, Judge Richard P. Emmet, of the Montgomery County Circuit Court, issued an order stating that Stone had no right to inherit from the estate of Hank Williams. In a second order issued on January 30, 1968, in the related guardianship estate case of Williams, Jr., Judge Emmet again reiterated that Stone had no right to inherit from the estate. In neither proceeding did the court address the issue of Stone's paternity. After the court's adverse ruling, the guardian ad litem sought permission to appeal on behalf of the Stone child; however, the court denied him permission, and he did nothing further on the child's behalf.[7]

Despite the court's rulings in the 1967 and 1968 proceedings, once Stewart became the administrator of the estate in 1969, he began setting aside money for Stone in the event that she ever claimed an interest in the estate. However, the estate was closed in August 1975, without further incident.

The record shows that it was not until 1974, when Stone was 21 years of age and attending the University of Alabama, that the truth of her paternity was ever suggested to her. During that year, she was informed that the

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[7] For a more detailed discussion of why the guardian ad litem did not appeal, see *infra* at pp. 24-26.

Montgomery Circuit Court was holding certain funds for her from the *estate of Lillian Stone*. She was not informed that Stewart had been setting aside money for her. All the court records pertaining to the 1967 and 1968 proceedings were sealed. Stone traveled to Montgomery and received the proceeds of the *Lillian Stone estate*, and it appears that it was at that time that she began to seriously seek information concerning her natural parentage.

On October 17, 1979, Stone arranged a meeting with Emogene Austin of the Alabama Department of Pensions and Security for the purpose of verifying her paternity. The record shows that at that time she apparently did not know the name of her natural mother but suspected that Hank Williams was her natural father. Ms. Austin revealed the agency's information to her concerning her background, including information indicating that her natural father was Hank Williams; that information shows that the State of Alabama knew of her background from almost the beginning. However, throughout this time, all of the records concerning her paternity remained sealed by the Montgomery Circuit Court, and she had no knowledge of the existence of the custody and support agreement or of the fact that Stewart had been setting aside her share of the estate, even after the 1967 and 1968 decrees were entered.

Stone continued to search for and retrieve documents and other information bearing on this subject through the early part of 1985. On July 1, 1985, she filed an action in Montgomery Circuit Court requesting that documents relating to her paternity, formerly placed under seal by the Montgomery Circuit Court, be released to her. On August 5, 1985, Stone sent a demand letter to Williams,

Jr., Acuff, and Rose, advising them of her claim in the estate and asking to share in the copyright renewals of her father, Hank Williams. Subsequently, on September 10, 1985, Williams, Jr., Acuff, and Rose filed the action for declaratory judgment that eventually led to this appeal.

Issues

The primary issues presented by this appeal are:

I.) whether the former judgments rendered in the 1967 and 1968 proceedings involving Stone's right to share in the estate of Hank Williams can be reopened by reason of legal fraud on the court; and, if so,

II.) whether Stone's claim to set aside the former judgments is barred by the equitable doctrine of laches; and, if not, then

III.) to what relief, if any, is Stone entitled?

In determining the primary issues, we also address the following questions:

a) whether the administrator or the attorney for the estate, having independent knowledge of Stone's claims to the estate, had a duty to notify the court of these facts;

b) whether the trial court's failure, in the 1967 and 1968 proceedings, to grant the guardian ad litem permission to appeal the adverse ruling on behalf of Stone constitutes an error of law sufficient to warrant modification of the judgment;

c) whether an illegitimate child is entitled to inherit from her natural father;

d) whether the doctrines of res judicata and collateral estoppel are applicable to the issues involved in this case; and finally,

e) whether Stone's adoption, two years after the death of her natural father, precludes her from establishing her paternity for the purpose of intestate succession.

Fraud

We now address the first issue, concerning legal fraud. Stone argues that the trial court erred in entering a summary judgment for the third-party defendants in this case because, she says, the evidence shows that they fraudulently conspired to keep certain facts relating to her existence, identity, and potential claim to the estate of Hank Williams concealed from the court. We agree.

The record contains substantial evidence from which a factfinder could conclude that third-party defendants Robert Stewart and administratrix Irene Smith and others withheld from the court before and during the 1967 and 1968 proceedings material facts concerning the issue of Stone's paternity. The evidence that follows indicates the series of events that transpired both prior to and following the death of Hank Williams that directly affected the fate of the child for whom Williams had unequivocally accepted responsibility by executing an agreement which contains some equivocation, but in which he referred to himself three times as the "father." These events ultimately resulted in the foreclosure of any contract right that the child might otherwise have had under the 1952 custody and support agreement, as well as the adverse judgments concerning her right to inherit, which are now the subject of this appeal.

The record shows that on October 15, 1952, Hank Williams accompanied Bobbie Jett to the law offices of his

attorney, Robert Stewart, to discuss a legal arrangement concerning an unborn child being carried by Jett. Mrs. Lillian Stone, Hank Williams's mother, was also present. At this meeting, Stewart prepared the custody and support agreement involved in the present lawsuit. According to Stewart's testimony in the 1967 proceedings, he represented only Hank Williams at the time the agreement was executed and at no time was Bobbie Jett or the unborn child represented by counsel.

After Hank Williams's death in January 1953, it was Stewart who prepared the letters of administration that were issued to Williams's mother, Lillian Stone, as administratrix. Although Stewart knew of the child's existence, identity, and potential claim to the estate, because he had drafted the custody and support agreement only three months earlier, the letters of administration contained only the names of the following persons as heirs and distributees of the estate:

> "Billie Jean Jones 'who states she is the widow,'
>
> "Randall Hank Williams, Jr.,
>
> "Mrs. Irene Williams Smith, a sister,
>
> "Elonzo H. Williams, father, and
>
> "Lillian S. Stone, mother."

It is interesting to note that the list did include Billie Jean Jones, "who states she is the widow" of the deceased; yet, *it did not include Stone.*

Over the course of 22 years following the death of Hank Williams, Stewart remained actively involved in the affairs of the Williams family. Throughout the years 1953 to 1975, Stewart served as the attorney for the estate, and

from 1969 through 1975 he also served as the administrator of the estate.

In 1953, Stewart even acted as Lillian Stone's attorney in her action to adopt the child. The record shows that at all times, Mrs. Stone held the child out to Stewart and to the world as the daughter of her deceased son, Hank Williams. This is evidenced by the following notes taken during an investigation conducted by the Montgomery County Department of Public Welfare, prior to Mrs. Stone's adoption of the child:

"1/28/53

> "Mrs. Stone discussed her situation with ease throughout the entire interview, but cried during the time that she was talking. She said that she was in the office in regard to a child which was born on January 6, 1953. She explained that the child is the daughter of Bobbie Webb Jett *and that the father of the child is her son, Hank Williams, deceased*. She brought with her a letter stating to whom it may concern and signed by Mr. Williams. It said that he would be responsible for the delivery of this child at the hospital where the mother desired. . . . She mentioned that she took care of Miss Jett throughout the pregnancy . . . [and] that her son took care of all the expenses during this time.
>
> " . . . She stated that Miss Jett had left the child at her home during the time that she was making a visit to Butler County, her home, and that she does not know what Miss Jett plans to do. She stated that she does not wish to keep the child unless she can adopt her and that she would be tremendously interested in doing so. *While crying, she stated that she knew that this is what her son would want her to do, and he once commented that he did not feel that Miss Jett was a*

suitable person to take care of the child. Mrs. Stone seemed quite devoted to the child and it was apparent that she was very desirous to keep this child as it appeared that she would feel closer to her son. She went on to say that Miss Jett lives in Nashville and that all their papers are with [Mrs. Stone's] lawyer, Mr. Robert B. Stewart. . . .

"* * * *

"During this interview, Mrs. Stone commented that she had a heart ailment and worker gathered that it must be somewhat serious. She said that Mr. Stewar[t] was not in accord with their adopting the child because of this heart condition and I went into a discussion with her asking her whether or not she was able to take care of the child and what plan would be made for its future in the event that this baby was left parentless. She stated that her daughter, Mrs. Irene Smith of Portsmouth, Va. would be glad to take the child and I wondered if she would be interested in taking her at this time. Mrs. Stone would not want her to take the child as she would like to have the baby herself." (Emphasis added.)

The adoption became final on December 23, 1954, following which Stewart continued to remain closely associated with the Williams family, and, in particular, with Irene Smith, Hank Williams's sister. The following letter, dated April 6, 1953, when the child was three months old, evidences the relationship of Smith and Stewart with regard to the estate of Hank Williams and the Stone child:

"Dear Mr. Stewart:

"* * * *

"The idea you have about making Billy [Hank Williams's reputed widow] a legal wife isn't bad at all but I fear that once you accept

her as one she will try every trick in the book. I keep thinking about the time when it will be necessary to renew copyrights on Hank's songs, as his legal wife she will be the one to do that unless of course that is one of the rights she gives up. Somehow I just can't picture her giving anything up.

"* * * *

"Thanks for sending the royalties check. It sure came in handy . . . . I want to thank you again for looking out for me. You know if mother adopts that child there will be a new will. Tee [Smith's husband] says that if she adopts it and then can't take care of it, he is not going to let me take it. Keep this under your hat, mabey [sic] it will never be necessary for me to have the child at all. I feel that the poor child would have a lot better chance in this life if it were adopted by someone that would never know of its origin at all. It won't be three years before someone will start telling it that it isn't exactly like other children. Oh, well I guess I sound like I just don't want mother to change her will but really that isn't it at all. I don't want a thing that we don't work for ourselves and whether or not I get that house or not doesn't bother me in the least. I am only thinking about that child. It may be the one thing that will help mother live to be a hundred[;] lets hope so. She seems to love it very much and will perhaps give it a wonderful chance."

Lillian Stone died on February 26, 1955. At that time, Smith became the administratrix of Hank Williams's estate and remained administratrix throughout the 1967 and 1968 litigation, until she relinquished her duties to Stewart in 1969. Also, after Lillian Stone's death, Smith and Stewart became directly involved in the decision-

making process concerning the fate of the child. The record shows that after Smith refused to fulfill her previous commitment to care for the child in the event that it ever became necessary, she initiated procedures to make the child *a ward of the State*. She was successful in her efforts, in part, because Mr. Stone, Lillian Stone's spouse, was unable to care for the child alone. The records of the Montgomery Department of Public Welfare reflect these events, as follows:

> "3/10/55
>
> "Mr. Bob Stewart, lawyer for Mrs. Stone, [deceased], called Miss Rainer on this date and stated that Mrs. Stone's daughter, Irene Smith, would like to come to the office to discuss what would be best for Kathy Stone, the adopted daughter of Mrs. Stone . . . .
>
> "Later: Mr. and Mrs. Smith in office by appointment. Mrs. Smith stated that she felt that it would be for the best interest of Kathy if the child was placed for adoption and was no longer associated with Hank Williams' family. She explained that she and her husband were devoted to the child and would be perfectly willing to keep the child but feels that there would always be publicity and gossip connected with this baby. Mrs. Smith states that she knows she agreed to take Kathy in the event anything happened to her mother and that she is still willing to take the child but feels strongly that the child would always be subjected to ugly gossip and vicious rumors and would possibly be hurt very deeply in later years by this talk.
>
> "Mr. and Mrs. Smith are at present living in Dallas, Texas, where Mr. Smith is in the Navy but Montgomery is their home and they plan to come back [here] in five (5) years when Mr.

Smith can retire. They also plan to return to Montgomery each year for the Hank Williams Memorial and Mrs. Smith stated that she could just hear the tongues wagging now when Kathy would ride down the street in an automobile as part of the parade to commemorate Hank. For these reasons Mrs. Smith feels that Kathy could lead a much more normal life if she was placed for adoption with another family. Mrs. Smith seems to be very sincere and earnest in her opions [sic] about Kathy's future, and reiterated that she was not trying to get out of raising this child. She does not want this department to think that she is shirking her duty or ashamed to take the child and kept asking if we did not agree that she was right in her way of thinking. Both Mr. and Mrs. Smith stated that if Montgomery were not their home and they did not plan to reside here permanently at the end of Mr. Smith's tour of duty with the Navy, that they would not hesitate to take Kathy and raise her as their own child. They feel that so many people know about the child however that whereever [sic] they might live, rumor and gossip would catch up with them and Kathy would always be affected by unfavorable publicity.

"We explained to Mr. and Mrs. Smith that as the adoption had been granted final, Mr. Stone was the legal parent . . . and we wondered how Mr. Stone felt about placing the child for adoption. Both Mr. and Mrs. Smith stated that Mr. Stone was a very emotional person and he would like for the Smiths to take Kathy and rear her. They have not talked to him as yet about what would be best for Kathy but they feel that they would have a hard time making Mr. Stone see their point of view. . . .

"At the present time, Kathy is staying part time with the Smiths and part time with Marie Glenn . . . . Mrs. Smith stated that Kathy was

much happier with Marie than she was with the Smiths as she cried continuously while they had her. Mrs. Smith stated that Kathy was a very nervous child and seemed to miss Mrs. Stone a great deal. Mrs. Smith wondered if it was all right for Kathy to remain with Marie until other plans could be worked out. Worker told Mrs. Smith that we felt wherever the child was happiest would be all right until permanent plans could be made.

" . . . Mrs. Smith stated that she was very anxious to have the placement of the child settled as she had already received numerous telephone calls asking what would become of the child. She states that she did not realize so many people knew about this child but she has had telephone calls from Ohio and other various states regarding Kathy and who Kathy would live with now. Mrs. Smith seems to feel there will be a great deal of publicity regarding Kathy's placement. Mrs. Smith was assured that all of our dealings would be strictly confidential and it would be handled as quietly as possible. . . .

"3/11/55

"Mr. and Mrs. Smith and Mr. Stone in office late in the afternoon. Mr. Stone apologized that he was in his work clothes and said that he came straight from work. Mrs. Smith stated that she had told Mr. Stone their feelings regarding their not taking Kathy and he seemed to understand. Mr. Stone stated that he could not possibly take care of Kathy and he guessed it would be best for her to be placed for adoption. Mr. Stone was quite emotional and cried but after a lengthy discussion stated again that he could see nothing else to do but have the child placed for adoption. He seemed sincere in his decision and signed a Boarding Home Agreement with

this Department. We explained to Mr. Stone that we would make an appointment with him to go to the Juvenile Court to sign a Petition and would place Kathy in a boarding home until permanent plans could be made for the State to assume her custody.

"3/15/55

"Worker met Mr. Stone at the Juvenile Court after an appointment had been made. Mr. Stone told Mrs. Dees that he felt this was the best plan for Kathy although it hurt him very deeply to give her up. Mr. Stone was very emotional and cried during the interview . . . .

"3/17/55

"Mrs. Smith in office by appointment as we explained that we would like as much background information on the alleged father of Kathy as possible as it would help in finding the most suitable home for the child. Mrs. Smith seemed to thoroughly understand and was quite willing to give any information and cooperate in every way. Mrs. Smith told us that Hank Williams was six feet, two inches (6' 2") tall, had a rather dark complexion which she would classify as almost olive. She said that she has the same skin which worker would say was almost olive. Mr. Williams was a brunette with brown eyes. He attended school through the tenth grade but did not like school too well. She added that he was very capable and made excellent grades in the things that he liked. He started singing at the age of five (5) and started playing the guitar at age seven (7). Mrs. Smith stated that she would consider her brother a musician, poet, composer, and philosopher."

On April 22, 1955, less than two months after Lillian Stone's death, Stone was made a ward of the State.

The record shows that Stewart acted as the attorney for the estate as early as 1953 and that Smith became the administratrix in 1955, but neither apprised the court of the evidence of the child, despite their intimate knowledge of her claims as a potential heir to the estate and as a possible creditor under the terms of the agreement to provide support. The following letter, dated February 28, 1962, written to Stewart by attorney Harold Orenstein, legal counsel for Wesley Rose, shows Stewart's knowledge of Stone's potential right to share in her father's copyright renewals:

> " . . . From the documents which you have furnished to me, Catherine Yvonne Stone (born Antha Belle Jett) was returned to the State of Alabama Welfare department after the death of Lillian Stone, and then re-adopted by persons unknown. *Nowhere in the documents is there an indication of the names of the natural parents of Catherine Yvonne Stone. We assume that these documents were the ones that you mentioned had been sealed and could never be re-opened.* However, we note that the child was given a certain sum of money for its 'homestead' rights in the property of Lillian Stone. . . . *It would seem that some token payment to the State of Alabama Welfare Department again on behalf of this child may or may not be indicated (depending upon your viewing of the Alabama law). There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could predict their valuation. We feel that a nominal payment might forever cut off the right of this child to the renewals.* We should like to have further comment from you regarding the foregoing.
>
> " . . . I shall confer with Wesley [Rose] after he has received [a] copy of this letter and, after having heard from you regarding Catherine

Yvonne Stone, proceed to draw up an agreement which we can present both to the courts and to Audrey Williams." (Emphasis added.)

In a second letter, dated July 5, 1962, Stewart responded:

"None of this would seem to affect the child's statutory right to copyright renewal. . . .

" . . . Since the statutory right of the child comes to it through its father, and since the federal courts have held this right belongs to an illegitimate, *we may be faced with a difficult problem, and certainly one we would not want to litigate.*

"As possible alternatives we can:

"a. Consider that by the adoption all rights under the renewal statutes have been lost.

"b. Try to explain the matter to our Welfare Department, which does not want the child ever to know its background, *but which would probably feel a duty to protect any right the child might have, and hope for a cooperative settlement and court approval.*

"c. Petition the court for approval of an agreement between Acuff-Rose and the Guardian, requesting that a guardian ad litem be appointed for Randall and another for all other possible minors who might claim a similar renewal right. *If we use this procedure, the guardian ad litem will have to be told what we are talking about, and might be vigorous in asserting this right. Much would depend on the person appointed, over which we have no control.*

"I do not believe we can make a token payment to the Welfare Department since any payment which would bar a later claim would have to be made with an understanding of the facts by the court. My

> alternatives are not much better, but perhaps you can improve on them with a little thought." (Emphasis added.)

No proceedings concerning the estate of Hank Williams were ever instituted on behalf of the Stone child. However, as stated earlier, in 1967, when Audrey Williams petitioned the court for final settlement of the estate on behalf of Williams, Jr., Smith, as administratrix, finally advised the court that there might possibly be an illegitimate child of the deceased somewhere, and the court then appointed Drayton Hamilton to serve as the child's guardian ad litem in both the 1967 and 1968 proceedings.[8]

The record shows that during the 1967 proceedings, Hamilton called Stewart to testify concerning his knowledge of the circumstances surrounding the child's claim to the estate. Again, despite Stewart's extensive knowledge of these circumstances from his involvement with the child's father, mother, grandmother, and aunt, he revealed nothing, with the sole exception of producing the original custody and support agreement. Certainly he did not reveal the contents of all the correspondence and

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[8] It is interesting to note that Smith, who was the administratrix for the estate during 1967 and 1968, also acted as the guardian for Williams, Jr., during these proceedings. Further, she had also acted as the guardian for Williams, Jr., while administratrix, in 1963, in the proceeding to allow Williams, Jr., to contract with Fred Rose Music, Inc., concerning his interest in his father's copyright renewals. It is also interesting that this procedure is in substance the one suggested by Stewart in his July 5, 1962, letter, as alternative "c", that is, a legal way to cut off Stone's right to copyright renewals she was entitled to under federal law, even though illegitimate.

information he knew concerning Stone's adoption and the information furnished to the Department of Pensions and Security. Smith, too, aside from advising the court of the existence of the child, remained silent about what she knew.

Stewart's plan, as proposed in his July 5, 1962, letter to Wesley Rose's attorney, suggested that the person appointed as guardian ad litem "might be vigorous in asserting this right [to copyright renewals]." Hamilton was vigorous. He fought for the child's rights, even without material evidence concerning her paternity. Hamilton argued that Hank Williams had accepted the child as his own and had made legal arrangements to have full custody and control of the child, and that if the law did not recognize her right to inherit simply because she was illegitimate, then the law was unconstitutional and should be changed.[9] Despite Hamilton's efforts, with the

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[9] In fact, on May 28, 1968, just 4 months after Judge Emmet denied the guardian ad litem permission to appeal, the Supreme Court of the United States, in *Levy v. Louisiana*, 391 U.S. 68, 88 S.Ct. 1509, 20 L.Ed.2d 436 (1968), commented on the harsh common law concept that illegitimate children were *nullius fillius*, as follows:

> "We start from the premise that illegitimate children are not 'nonpersons.' They are humans, live, and have their being. They are clearly 'persons' within the meaning of the Equal Protection Clause of the Fourteenth Amendment.
>
> "* * * *
>
> "Why should the illegitimate child be denied rights merely because of his birth out of wedlock?

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evidence that it had before it at the time, the trial court ruled against the child in both the 1967 and 1968 proceedings.[10] Hamilton, then as the guardian ad litem, requested permission to appeal the rulings on behalf of the child,

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> He certainly is subject to all the responsibilities of a citizen, including the payment of taxes and conscription under the Selective Service Act. How under our constitutional regime can he be denied correlative rights which other citizens enjoy?"

391 U.S. at 70-71.

[10] In its December 1, 1967, order, the court stated:

> "In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiriam Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams . . . . "

Furthermore, in its January 30, 1968, decree, the court stated that while it was "impressed with the argument of the Guardian Ad Litem [for Stone]," and "adopt[ed] the sound reasoning . . . that the time is long past due when illegitimate offspring should be afforded adequate property rights," the court, nevertheless, found that Stone had been adopted and that her adoptive parents, after having been notified of the proceedings, "chose not to pursue any action in regard to these proceedings," and that she could not recover.

The trial court's conclusion that adoption precluded an "after-adopted" illegitimate child from inheriting was erroneous, however. This subject is discussed, *infra*, under the heading "Intestate Succession and the Illegitimate Child."

but the court refused to grant permission. Thus, Hamilton's court-appointed representation of the Stone child ended, and nothing further was done on her behalf.[11]

Despite the court's rulings in the 1967 and 1968 proceedings, when Stewart became the administrator of the estate in 1969, he began setting aside a share of the estate for Stone. During that time, in a series of letters to the attorney for Williams, Jr., Stewart wrote that "the last two distributions to Randall . . . were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child." Stewart's concealment with regard to the Stone child continued, and in April 1974 he alerted counsel for Williams, Jr., that Stone had traveled to Montgomery and claimed her homestead that had been set aside for her in the Lillian Stone estate. Stewart wrote: "[Her] ancestry may well be reasonably obvious to her, and further trouble may ensue." However, the estate of Hank Williams was closed in August 1975, without further incident, and the money that Stewart had been setting aside for Stone was distributed along with the other assets of the estate.

The law in Alabama concerning legal fraud has been stated by this Court as follows:

> "To constitute fraud, in its legal signification, it is not necessary that one intend to injure another. . . .

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[11] See our discussion, *infra*, under "Error of Law," concerning the right of a guardian ad litem to appeal an adverse ruling on behalf of a child, and the duties of a guardian ad litem and the duty of the court when a minor's interest is involved.

> " 'If fraud is proved the law will infer an improper motive, and the actual motive of the speaker is immaterial. In other words, it is not essential that the [misrepresentor] be motivated by a desire to injure complainant or to benefit himself; and it makes no difference that his motive was solely to benefit a third person.' "

Duncan v. Johnson, 338 So. 2d 1243, 1250 (Ala. 1976) (quoting C.J.S. *Fraud* § 26). With regard to fraud on the court, this Court has further recognized the following principles:

> " '[Where] the fraud itself [is] to be consummated through the instrumentality of a court of justice, the protection of the court demands that there should be a remedy. We can conceive of no worse reflection upon a judicial system, no lowering of its dignity and of the respect due to its findings more regrettable than that the tribunal of justice may become an impotent agency of fraud against those who look to it for protection and who are free from fault. . . . ' "

Duncan, 338 So. 2d at 1251 (quoting *Bolden v. Sloss-Sheffield Steel & Iron Co.*, 215 Ala. 334, 335, 110 So. 574, 575 (1925)). Stated differently:

> " 'Where [fraud] relates to the conduct of the suit, as where it prevents a party from asserting his rights, there is no fair adversary proceeding, *and equity will interfere.*' "

Eskridge v. Brown, 208 Ala. 210, 211, 94 So. 353, 354 (1922) (quoting 6 *Pom. Eq. Jur.* at 1092) (emphasis added).

The idea that as an attorney, Stewart had a fiduciary relationship with the estate of Hank Williams, his client, is elementary. See *Jones v. Caraway*, 205 Ala. 327, 87 So.

820 (1921); *Kidd v. Williams*, 132 Ala. 140, 143, 31 So. 458 (1901); and *Yonge v. Hooper*, 73 Ala. 119 (1882). In *Yonge*, this Court recognized that

> "[an] [a]ttorney and client sustain to each other the severe relation of trustee and *cestui que trust*, and their dealings together are subject to the same intendments and imputations, as those which obtain between other trustees and their beneficiaries."

Yonge, 73 Ala. at 121.

Furthermore, Stewart, as administrator, and Smith, as administratrix, held the position of a trustee, and their administration of the estate was that of a trust. See *Clark v. Clark*, 287 Ala. 42, 47, 247 So. 2d 361, 365 (1971); *Keith & Wilkinson v. Forsythe*, 227 Ala. 555, 557, 151 So. 60, 61 (1933). In *Maryland Casualty Co. v. Owens*, 261 Ala. 446, 451, 74 So. 2d 608, 612 (1954), this Court recognized that

> "[a]n executor occupies a position of trust with respect to those interested in the estate and is the representative of the decedent, of creditors and of the legatees and distributees."

(Citing *Durden v. Neighbors*, 232 Ala. 496, 168 So. 887, 889 (1936); and *Amos v. Toolen*, 232 Ala. 587, 168 So. 687, 692 (1936).) At the time this estate was being administered, the law of Alabama imposed the following requirements upon an administrator:

> "In making settlements of an administration, the executor or administrator must proceed as follows:
>
> "* * * *
>
> "He must, at the same time, file a statement, on oath, of the names of the heirs and legatees

> of such estate, specifying particularly which are under the age of twenty-one years. . . ."

Tit. 61, § 295, Code of Alabama, 1940, presently Code 1975, § 43-2-502. This Court has held that an administrator who knowingly and willingly conceals from the court administering an estate the name of an heir or distributee, is guilty of such a fraud on the court as to authorize a court of equity to set the decree of settlement aside. See *Fidelity & Deposit Co. of Maryland v. Hendrix*, 215 Ala. 555, 112 So. 117 (1927); and *cf., Leflore By and Through Primer v. Coleman*, 521 So.2d 863 (Miss. 1988); *Smith By and Through Young v. Estate of King*, 501 So.2d 1120 (Miss. 1987); *Matter of Estate of Flowers*, 493 So.2d 950 (Miss. 1986).

We recognize, generally, that mere silence does not constitute fraud; however, a different rule applies where confidential relations or particular circumstances exist. Code 1975, § 6-5-102, provides:

> "Suppression of a material fact which the party is under an obligation to communicate constitutes fraud. *The obligation to communicate may arise from the confidential relations of the parties or from the particular circumstances of the case.*" (Emphasis added.)

Furthermore, it has been recognized that

> "[a] fiduciary duty need not spring from a legal relation but may arise from a relation which is merely moral, social, domestic, or purely personal in character, and that fiduciary relations embrace not alone the obviously confidential relations such as attorney and client, principal and agent, guardian and ward, and the like, but also every relation in which as matter of fact there is confidence reposed on one side and a

> resultant domination and influence on the other."

17 C.J.S. *Contracts*, § 154 at 911 (1963).

In the present case, both Stewart and Smith had a legal obligation, as either the attorney or administrator of the estate or because of the particular circumstances involved, to advise the court at the earliest possible date that the Stone child existed and possessed potential claims to the estate as an heir, being a natural child of the deceased, and as a creditor under the child support agreement. *Because the corpus of the estate involved copyright renewals, and because illegitimates could share in such rights under federal law, the "particular circumstances" of this case make the legal obligation a weightier one.* The evidence shows that Stewart, as administrator, and as attorney for Smith, knew that the child had a substantial claim to the copyright renewals.[12] Except for efforts by guardian ad litem Hamilton, no effort on behalf of Stone was made to establish her right to inherit or to establish her contract claim for child support under the 1952 agreement. Likewise, because all of the material circumstances surrounding her paternity were never made known to the court in the ancillary proceedings brought on behalf of Williams, Jr., Stone never received a "fair adversary proceeding," to which she was entitled by law. See *Eskridge*, 208 Ala. 210, 211, 94 So. 353, 354 (1922).[13]

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[12] His withholding of one-half of the monies, even after the favorable 1967 and 1968 decrees, and his 1962 correspondence shows his concern about the child's ever discovering who she was.

[13] We note that, usually, paternity or legitimation proceedings are initiated by a parent of the child; however, in this case

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Whether Stewart and Smith intended to deceive the court or merely sought to protect their own interests or the interests of Williams, Jr., or any other parties interested in the estate, or whether they intended to injure the Stone child is immaterial. Inasmuch as they remained silent about material facts concerning the Stone child, known to them, upon which the law imposed a legal duty to communicate, their actions constituted legal fraud. See Code 1975, § 6-5-102, formerly Tit. 7, § 109, Code of Alabama, 1940.

Further, it would appear that Smith's eventual notification to the court about the agreement, in 1967, was not for the purpose of showing Stone's right to share in the estate, but, rather, for the opposite purpose of showing that she had no right to share in the estate.[14] In her answer to the 1967 action, Smith responded that "she believes Randall Hank Williams is the sole heir of his

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Stone's natural parents were deceased or unavailable and her adoptive parents were hostile in regard to this matter. Furthermore, once Stone was made a ward of the state, the Alabama Department of Pensions and Security could have pursued the child's rights; however, it did not. Finally, while Stone was a ward of the court, Judge Emmet, although convinced that the law regarding illegitimates was not right (and the Supreme Court of the United States so held in *Levy v. Louisiana* shortly thereafter). he, too, failed in his duty to protect the child's right by refusing to grant her guardian ad litem permission to appeal (see discussion, *infra*, "Error of Law").

[14] We have previously noted that this procedure was substantially what Stewart had suggested to Wesley Rose's attorney in 1962 as an alternative way to forever bar Stone from sharing in the copyright renewals.

father, Hiriam 'Hank' Williams, . . . ; however, in the possession of the administratrix are certain documents which may give rise to or affect the rights of another minor to share in said estate . . . . " That answer was prepared by Stewart, who at that time was aware that the *copyright laws allowed illegitimates to inherit.*

We cannot say that Smith's and Stewart's concealment did not affect the judgments ultimately rendered in the 1967 and 1968 proceedings, which denied Stone any right in her natural father's estate. While we recognize that the law in Alabama at that time was unfavorable to illegitimate children with regard to intestate succession from their *fathers*, we cannot say that Stone would not have prevailed upon appeal, because of the strong statements made in *Levy v. Louisiana*, which was extant at the time the appeal would have been pending had one been filed. In short, this Court very well could have reached the result it reached later in the case of *Everage v. Gibson*, 372 So. 2d 829 (Ala. 1979), cert. denied, 445 U.S. 931 (1980), and could have recognized Stone's right, as the natural child of Hank Williams, to inherit from his estate. Because of the circumstances surrounding the 1967 and 1968 decrees, there are grounds for setting them aside, at least in part, for the reasons we shall hereinafter state.

Error of Law

At this time, we address another circumstance bearing on the validity of the 1967 and 1968 judgments. The record shows that after the trial court ruled against Stone in both proceedings, Hamilton, as her guardian ad litem, requested permission to appeal the rulings on her behalf.

Even though Judge Emmet thought the law was wrong, he denied Hamilton permission to appeal. After being denied the right to appeal, Hamilton did nothing further on her behalf.

Under the law as it exists today and as it was at the time of the proceedings in question, Stone, or her guardian ad litem acting on her behalf, had the right to appeal the trial court's adverse ruling to this Court. Title 7, § 754, Code of Alabama, 1940 (Recompiled 1958) (now, Code 1975, § 12-22-2) provided for appeals from the circuit court to the Supreme Court, as follows:

> "From any final judgment or decree of the circuit court, or courts of like jurisdiction, or probate court, except in such cases as are otherwise directed by law, *an appeal lies to the supreme court, for the examination thereof as matter of right, on the application of either party, or his personal representative;* and the clerk, register, or judge of probate, must certify the fact that such appeal was taken, and the time when, as part of the record, which gives the supreme court jurisdiction of the case." (Emphasis added).

In addition, Tit. 7, § 786, Code of Alabama 1940 (Recompiled 1958), provided that "a guardian ad litem may take and prosecute an appeal without giving any security for costs of the appeal, and shall not be liable personally for costs of appeal."

In the present case, after the trial court refused to grant permission to appeal the adverse ruling, Hamilton understandably considered his representation of the child ended. The general rule is that "[a] guardian ad litem or next friend is always subject to the supervision and control of the court, and he may act only in accordance with

the instructions of the court." 43 C.J.S. *Infants* § 234, p. 610 (1978). Furthermore, at the time of these proceedings, this Court had construed Tit. 7, § 786, to hold that a guardian ad litem was *personally liable* for the costs of an appeal taken from a decree of the probate court, if the judgment of the lower court was affirmed. See *Ward v. Mathews*, 122 Ala. 188, 25 So. 50 (1898).

Because Stone was a ward of the court, it was the duty of the court, even though it had appointed a representative for Stone, to protect her rights and interests, on its own motion.[15] See 43 C.J.S. *Infants*, § 220, p. 564; see

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[15] We are aware that there are many settlements involving minors made in pending lawsuits, in which courts are called upon to make certain that such settlements are in the best interest of the minor. We further note that Alabama law has been especially sensitive with regard to the rule that any settlements made on behalf of minors be approved by the court. In *Large v. Hayes*, 534 So.2d 1101 (Ala. 1988), this Court recognized the role of the trial court in determining what is in the "best interest of the minor," as follows:

> "This Court has recognized the special nature of an attempted settlement of a minor's claim. Before such a settlement can be approved, there must be a hearing, with an extensive examination of the facts, to determine whether the settlement is in the best interest of the minor. . . .
>
> > " ' "The Court may, upon being advised of the facts, upon hearing the evidence, enter up a valid and binding judgment for the amount so attempted to be agreed upon, but this is not because of the agreement at all – that should exert no influence – but because it appears from

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also *Fletcher v. First Nat'l Bank of Opelika*, 244 Ala. 98, 11 So. 2d 854 (1943) (which recognized that a court of equity is the guardian of all infants within its jurisdiction). Therefore, there can be no question that the trial court's refusal to allow Stone to utilize her right to appeal constituted an error of law, especially when the judge's order that disallowed her claim stated on its face that he did not consider it to be in her best interest.

Code 1975, § 12-11-60, formerly Code 1940, Tit. 13, § 145, provides:

> "(a) When any error of law or fact has occurred in the settlement of any estate of a decedent to the injury of any party, without any fault or neglect on his part, such party may correct such error by filing a complaint in the circuit court within two years after the final settlement thereof. . . .
>
> "(b) The limitations of subsection (a) of this section do not extend to infants or persons of unsound mind who are allowed two years after the termination of their respective disabilities, but in no case to exceed 20 years."[16]

Under this section, an error of law is sufficient to warrant modification of the judgment rendered in the shadow of

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> the evidence that the amount is just and fair, and a judgment therefor will be conservative of the minor's interests." '"

Large, 534 So.2d at 1105 (citations omitted).

[16] The issues of statutes of limitations and laches, as they relate to this case, are treated in our discussion under the heading "Timeliness," *infra*.

that error, even in the absence of fraud. See *Maryland Casualty Co. v. Owens*, 261 Ala. 446, 450, 74 So. 2d 608, 610-11 (1954).

Similarly, Rule 60(b)(6), Ala.R.Civ.P., provides that the court may relieve a party from the operation of a final judgment for any reason justifying such relief. An error of law, such as the one committed by the trial court in the 1967 and 1968 proceedings involving this estate, and that error's attendant consequences, would certainly appear to justify relief under this rule.

Therefore, even absent a finding that the judgments rendered against Stone in 1967 and 1968 were tainted by legal fraud, we would be compelled by the serious nature of the error committed by the trial court in those proceedings to revisit the judgments and modify their operation with respect to her rights, especially since the beneficiaries of those decrees and of the subsequent final settlement are the same individuals who were attempting to secure a judicial determination that would bar her right to share in copyright renewals. At the very least, this error of law aborted any res judicata effect of the 1967 and 1968 decrees.

Timeliness

Having found merit in Stone's claim that the 1967 and 1968 judgments rendered against her should be set aside, we now address whether her delay in asserting

that claim was reasonable.[17] Her claim, being equitable in nature, is governed by the doctrine of laches.

The doctrine of laches is purely equitable in nature and may be invoked to deny equitable relief to one guilty of unconscionable delay in asserting a claim. See *United States v. Olin Corp.*, 606 F.Supp. 1301, 1309 (N.D. Ala. 1985). However, this Court has recognized that the mere lapse of time alone does not establish laches. See *Davis v. Thomaston*, 420 So. 2d 82, 84 (Ala. 1982). Rather, the question of laches is one that must be decided upon the peculiar facts and circumstances of each case. See *Lindley v. Lindley*, 274 Ala. 570, 575, 150 So. 2d 746, 750 (1963); and *Jones v. Boothe*, 270 Ala. 420, 424, 119 So. 2d 203, 207 (1960). In *Multer v. Multer*, 280 Ala. 458, 462, 195 So. 2d 105, 109 (1966), this Court recognized that

> " '[l]aches is not fixed by a hard and fast limit of time, but is a principle of good conscience dependent on the facts of each case.' "

(Quoting *Woods v. Sanders*, 247 Ala. 492, 496, 25 So.2d 141, 144 (1946)). In addition, this Court has held that a party will not be estopped from asserting a fact of which he was ignorant, if upon discovery of that fact, he promptly seeks relief. See *Duncan v. Johnson*, 338 So. 2d 1243, 1254 (Ala. 1976). Stated differently, the doctrine of laches will not apply in the absence of information and knowledge sufficient to put one on notice of a claim. *Id.*; see also *Sims v. Lewis*, 374 So. 2d 298, 305 (Ala. 1979); and *Cotney v.*

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[17] The reader should bear in mind that no issue has been raised as to the timeliness of Stone's paternity action below. Therefore, our discussion concerns only her action to have the prior judgments set aside on the basis of fraud.

Eason, 269 Ala. 354, 357, 113 So. 2d 512, 516 (1959). The law recognizes that for the doctrine of laches to apply, the party claiming the right must have failed to do something that equity would have required him to do. See *Olin Corp.*, 606 F.Supp. at 1309; and *Sims*, 374 So. 2d at 305.

In the present case, the estate of Hank Williams was not finally closed until August 1975. The record shows that only one year earlier, in 1974, was the truth of Stone's paternity first suggested to her, and, at that time, it appears to have been presented merely as theory or speculation. Before 1974, for personal reasons, Stone's adoptive parents had vowed that she never know the identity of her natural father, and it appears that they were successful in concealing this information from her. The record also shows that at the early age of three, Stone had been transferred from Montgomery, permanently, to an adoptive home in Mobile, which effectively removed her from any persons who might have known her identity. In addition, as previously discussed, the record is quite clear that the attorney and administratrix of the estate and others did all that they could, including committing legal fraud, to ensure that she never discover her identity or any facts material to her claim, and the record shows that the State of Alabama, acting through the Department of Pensions and Security, and the courts essentially contributed to the concealment of her parenthood, although aware of it. Any public records, or documents that might have led to her discovery of her paternity at an earlier date had been ordered sealed by the court from the time that she was a small child. Upon retrieving these sealed documents in *1985*, Stone promptly made a demand for her share, and the plaintiffs

instituted this action for a determination of her rights in view of the prior judgments.[18] Based on all of these considerations, we conclude that her attack on, and request for relief from, the prior judgments rendered in this matter are not time-barred.

Intestate Succession and the Illegitimate Child

Having found that the judgments rendered against Stone in the 1967 and 1968 proceedings may be set aside

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[18] We also note that Williams, Jr., Acuff, and Rose are the parties who initiated the litigation from which this appeal arose, and who, themselves, sought a resolution of the matter of Stone's rights in the estate of Hank Williams.

In their complaint for declaratory judgment, Williams, Jr., Acuff, and Rose requested the following relief:

> "2. That this Court enforce and uphold in every respect the prior Orders and Judgments of this Court in Civil Action Nos. 25,056 and 27,960, declare them valid and binding upon the parties hereto, and enjoin Catherine Yvonne Stone from making further claims and demands relative to the estate of Hiriam 'Hank' Williams or the aforesaid copyright interest or renewals thereof.
>
> "3. That in the event his Court alters, modifies or otherwise changes the prior Orders and Judgments in Actions No. 25,056 and 27,960 that this court proceed to adjudicate and determine the rights of the parties hereto with regard to the Estate of Hiriam 'Hank' Williams and the copyright and renewal copyright interest of the musical compositions of Hiriam 'Hank' Williams.
>
> "4. That this Court will grant to the Plaintiffs such other, further and different appropriate relief to which they may be entitled."

with respect to her right to share in the estate, and, furthermore, having found that her claim to set aside those judgments is not time-barred, we hold that she presented evidence that she was entitled to a determination of her rights, and to reopen the estate, as she requested in her third-party complaint. Therefore, the trial court erred in entering summary judgment on her claim. Because the entire record is before this Court, even though an appeal was not taken from the other judgments, in the interest of judicial economy, we will now address those rights rather than remand the cause to the trial court.

The law concerning the right of an illegitimate child to inherit through intestate succession has seen many changes over the years. At common law, an illegitimate child, who had not been legitimated, was considered the child of no one and could inherit from no one. See *Williams v. Witherspoon*, 171 Ala. 559, 55 So. 132 (1911). The courts considered an illegitimate child "*nullius filius*," the "heir to nobody," and thus, the child "ha[d] no ancestor from whom any inheritable blood [could] be derived." *Lingen v. Lingen*, 45 Ala. 410, 413 (1871) (quoting 1 Wendell's Blackstone, 459).

By 1929, in the case of *Moore v. Terry*, 220 Ala. 47, 124 So. 80 (1929), overruled in part by *Everage v. Gibson*, supra, this Court had recognized that an illegitimate child, who had not been legitimated, could inherit from his mother, but not from his father, even if paternity was shown. This change was also reflected in Code 1940, Tit. 16, § 6, which provided that "[e]very illegitimate child is considered as the heir of his mother, and inherits her estate in whole or in part, as the case may be, in like

manner as if born in lawful wedlock." Later, in *Hudson v. Reed*, 259 Ala. 340, 66 So. 2d 909 (1953), this Court described the common law rule as a "harsh rule," and held that an illegitimate child, because of this statute, could inherit not only *from* his mother but also *through* his mother.

Between 1929 and 1979, however, the law in Alabama recognized only the following two methods by which an illegitimate child could be legitimated in order to inherit from its father through intestate succession: 1) by marriage of the parents, accompanied by the father's recognition of the child; or 2) by a written declaration, attested by two witnesses, and filed with the judge of probate.[19]

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[19] It is quite possible that the 1952 custody and support agreement would have been sufficient to legitimate Stone if Stewart, the child's mother, or other parties, including the State of Alabama, had attempted to utilize this method. Code 1940, Tit. 27, § 11, in effect at the time of Stone's birth, provided specifically as follows:

> "The father of a bastard child may legitimate it, and render it capable of inheriting his estate, by making a declaration in writing, attested by two witnesses, setting forth the name of the child proposed to be legitimated, its sex, supposed age, and the name of the mother, and that he thereby recognizes it as his child, and capable of inheriting his estate, real and personal, as if born in wedlock; the declaration being acknowledged by the maker before the judge of probate of the county of his residence, or its execution proved by the attesting witnesses, filed in the office of the judge or probate, and recorded in the minutes of his court, has the effect to legitimate such child."

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See *Moore*, 220 Ala. 47, 124 So. 80 (1929); see also Code 1923, §§ 9299, 9300, later codified at Code 1940, Tit. 27, §§ 10, 11, and Code 1975, §§ 26-11-1, 26-11-2.

Additionally, there were statutes in effect at the time of Stone's birth that provided that a father of an illegitimate child could be required to support the child, even though there had been no formal adjudication of paternity. See Code 1940, Tit. 34, §§ 89, 90. Under these provisions, a charge of nonsupport against the putative father could be sustained, even if he had not been adjudicated the father, if the putative father had publicly acknowledged or treated the child as his own in a manner to indicate his voluntary acknowledgement of parenthood. See *Law v. State*, 238 Ala. 428, 191 So. 803 (1939). These statutes evidence the policy of the law to compel the father of an illegitimate child to support that child if the father had *voluntarily acknowledged his parenthood*, as Hank Williams did here.[20]

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Normally, any agreement would have been filed before the father's death, but the statute was not so limited.

[20] We recognize that there is no Alabama case law on the issue of whether a purely contractual obligation to pay child support survives the death of the obligor; however, some jurisdictions, even at the time of Stone's birth, had held that death did not terminate a voluntary contractual obligation made by the decedent to pay child support, such as that made in the present case. We need not decide in this case whether a *court-ordered* obligation to pay child support survives the death of the obligor; however, we do hold that an agreement to pay child support, such as that involved in this case, that is purely

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After the United States Supreme Court decided the cases of *Trimble v. Gordon*, 430 U.S. 762 (1977), and *Lalli v. Lalli*, 439 U.S. 259 (1978),[21] Alabama's law concerning the right of an illegitimate child to inherit from its father changed dramatically. In *Trimble*, 430 U.S. 762 (1977), the Court found an Illinois statute, much like Alabama's Code 1975, §§ 26-11-1 and 26-11-2, which set forth the

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contractual and voluntarily entered without judicial compulsion, does not lose its enforceability at the death of the obligor, unless otherwise expressed.

We note, in particular, the following cases:

1) *In re Cirillo's Estate*, 114 N.Y.S.2d 799 (Queens Sur. 1952), in which the court, settling an account against the estate of the deceased, held that while generally a child support obligation ends with the death of the parent, the deceased's agreement to make support payments as long as his responsibility for the support of the illegitimate child existed under the law indicated that he intended to bind his estate beyond his death; and

2) *Stumpf's Appeal*, 116 Pa. 33, 8 A. 866 (1887), in which the court reversed a judgment disallowing the plaintiff's claim against the putative father's estate and held that there was nothing in the support agreement to indicate an intention by the obligor to limit his obligation to support his illegitimate child to his lifetime only and that the evidence showed that the purpose of the agreement was to save the mother from the expenses of rearing the child, and thus, the contract was continuing and binding on the decedent's estate.

See also, Annot., *Validity and Construction of Putative Father's Promise to Support or Provide for Illegitimate Child*, 20 A.L.R. 3d 500, 540 (1968).

[21] Of course, the rights of illegitimates to equal protection had been decided in *Levy v. Louisiana* in 1968.

two methods of legitimation discussed above, to be unconstitutional under an equal protection challenge. The Court stated the following:

> " 'The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual – as well as an unjust – way of deterring the parent.' "

Trimble, 430 U.S. at 769 (quoting *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972)). In *Lalli*, 439 U.S. 259 (1978), the United States Supreme Court upheld, as constitutional, a similar New York statute because it provided that an illegitimate child could inherit from its father if there had been a judicial determination of paternity before the father's death.

In *Lalli*, Mr. Justice Powell, while recognizing, however, the importance of the competing state interest in the just and orderly administration of decedents' estates, stated as follows:

> "The primary state goal underlying the challenged aspects of § 4-1.2 is to provide for the just and orderly disposition of property at death. We long have recognized that this is an area with which the States have an interest of considerable magnitude. *Trimble*, [430 U.S. 762 (1977)] at 771; *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. at 170; *Labine v. Vincent*, 401 U.S. at

538; see also *Lyeth v. Joey*, 305 U.S. 188, 193 (1938); *Merger v. Grima*, 8 How. 490, 493 (1850).

> "This interest is directly implicated in paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved. Establishing maternity is seldom difficult. As one New York Surrogate's Court has observed: '[T]he birth of the child is a recorded or registered event usually taking place in the presence of others. In most cases the child remains with the mother and for a time is necessarily reared by her. That the child is the child of a particular woman is rarely difficult to prove.' *In re Ortiz*, 60 Misc.2d 756, 761, 303 N.Y.S.2d 806, 812 (1969). Proof of paternity, by contrast, frequently is difficult when the father is not part of a formal family unit. 'The putative father often goes his way unconscious of the birth of a child. *Even if conscious, he is very often totally unconcerned because of the absence of any ties to the mother*. Indeed the mother may not know *who* is responsible for her pregnancy.' Ibid. . . . ; accord, *In re Flemm*, 85 Misc.2d 855, 861, 382 N.Y.S.2d 573, 576-577 (Surr.Ct. 1975); *In re Hendrix*, 68 Misc.2d, at 443, 326 N.Y.S.2d, at 650; cf. *Trimble*, supra, at 770, 772."

439 U.S. at 268-69 ("who" emphasized in original; other emphasis added).

Further, Mr. Justice Powell quoted extensively from *In re Flemm*, 86 Misc.2d 855, 381 N.Y.S.2d 573 (N.Y. Sur. 1975), as follows:

> " 'An illegitimate, if made an unconditional distributee in intestacy, must be served with process in the estate of his parent or if he is a distributee in the estate of the kindred of a parent . . . . And, in probating the will of his parent (though not named a beneficiary) or in

> probating the will of any person who makes a class disposition to "issue" of such parent, the illegitimate must be served with process. . . . How does one cite and serve an illegitimate of whose existence neither family nor personal representative may be aware? And of great concern, how achieve finality of decree in *any* estate when there always exists the possibility however remote of a secret illegitimate lurking in the buried past of a parent or an ancestor of a class of beneficiaries? Finality in decree is essential in the Surrogates' Courts since title to real property passes under such decree. Our procedural statutes and Due Process Clause mandate notice and opportunity to be heard to all necessary parties. *Given the right to intestate succession, all illegitimates must be served with process. This would be no real problem with respect to those few estates where there are "known" illegitimates. But it presents an almost insuperable burden as regards "unknown" illegitimates.* The point made in the [Bennett] commission discussions was that instead of affecting only a few estates, procedural problems would be created for many – some members suggested a majority – of estates.' 85 Misc. 2d, at 859, 381 N.Y.S.2d, at 575-576."

439 U.S. at 270 (emphasis added).

Recognizing a different view in *Pickett v. Brown*, 462 U.S. 1, 103 S.Ct. 2199, 76 L.Ed.2d 372 (1983), the United States Supreme Court, in holding a Tennessee statute of limitations involving illegitimate children unconstitutional, stated:

> *"In view of the history of treating illegitimate children less favorably than legitimate ones, we have subjected statutory classifications based on illegitimacy to a heightened level of scrutiny.* Although

we have held that classifications based on illegitimacy are not 'suspect,' or subject to 'our most exacting scrutiny,' *Trimble v. Gordon*, [430 U.S. 762 (1977)], at 767; *Mathews v. Lucas*, 427 U.S., at 506, the scrutiny applied to them 'is not a toothless one. . . . ' Id., at 510. In *United States v. Clark*, [445 U.S. 23 (1980)], we stated that 'a classification based on illegitimacy is unconstitutional unless it bears "an evident and substantial relation to the particular . . . interest [the] statute is designed to serve." ' 445 U.S., at 27. See also *Lalli v. Lalli*, [439 U.S. 259 (1978)], at 265 (plurality opinion) ('classifications based on illegitimacy . . . are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests'). We applied a similar standard of review to a classification based on illegitimacy last Term in *Mills v. Habluetzel*, 456 U.S. 91 (1982). We stated that restrictions on support suits by illegitimate children 'will survive equal protection scrutiny to the extent they are substantially related to a legitimate state interest.' Id., at 99.

"Our decisions in *Gomez* [*v. Perez*, 409 U.S. 535 (1973)] and *Mills* are particularly relevant to a determination of the validity of the limitations period at issue in this case. In *Gomez* we considered 'whether the laws of Texas may constitutionally grant legitimate children a judicially enforceable right to support from their natural fathers and at the same time deny that right to illegitimate children.' 409 U.S., at 535. We stated that 'a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally,' id., at 538, and held that 'once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a

> child simply because its natural father has not married its mother.' Ibid. *The Court acknowledged the 'lurking problems with respect to proof of paternity,' ibid., and suggested that they could not 'be lightly brushed aside.' Ibid. But those problems could not be used to form 'an impenetrable barrier that works to shield otherwise invidious discrimination.'* Ibid." (Emphasis added.)

462 U.S. at 8-9.

Consequently, in 1979, this Court, in the case of *Everage v. Gibson*, 372 So. 2d 829 (Ala. 1979), cert. denied, 445 U.S. 931 (1980), in order to avoid finding Alabama's statutory scheme for intestate succession unconstitutional, construed it to include a third method of legitimation, i.e., a judicial determination of paternity made within two years of birth and during the father's lifetime. The *Everage* Court gleaned this third method from the child support statutes found at Code 1975, § 26-12-1 et seq. In 1982, the Alabama legislature superseded *Everage* and wrote this procedure into the Probate Code itself, in § 43-8-48, which provides that an illegitimate child is considered to be the child of the father if the parents marry or if paternity is established by an adjudication before the death of the father or *thereafter by clear and convincing proof*.[22] Then, in addition, in 1984, the

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[22] While not at issue in the present case, it is worth noting that the comments to this section expressly state that there is no time limitation in which to bring an action for paternity under this section because the drafters had serious reservations about the constitutionality of the former two-year limitations period adopted in *Everage*, and rightfully so. See *Abrams v. Wheeler*, 468 So. 2d 126 (Ala. 1985) (which recognized that the two-year limitations period in *Everage* was unconstitutional).

legislature repealed Code 1975, § 26-12-1 et seq., and replaced those sections with the Alabama Uniform Parentage Act, found at Code 1975, § 26-17-1 et seq. Like the child support statutes it replaced, the AUPA sets forth a mechanism whereby a judicial determination of paternity can be made. Therefore, there are presently two statutory schemes for judicial determination of paternity, one in the Probate Code and one in the AUPA.

Under the law as it exists today, there can be no question that where, as in this case, paternity has been established by clear and convincing evidence,[23] the law

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[23] For the purpose of clarity, we briefly recap the evidence that compelled the trial court's finding of paternity that is now undisputed in this case: 1) the 1952 custody and support agreement, that was drafted by Williams's attorney, refers to Hank Williams throughout as the "father" of the child; 2) the 1952 agreement, itself, requires a relinquishment by the mother of virtually all rights in the child to Hank Williams; 3) the 1952 agreement provided that the mother be given a one-way plane ticket to California, and that the child live with Lillian Stone, Williams's mother, for two years, during which time he would fully support the child; 4) the 1952 agreement provided that at the age of 3, the child "was to live with him [Hank Williams] continuously and be wholly and completely supported for by him, and cared for by him" (it is interesting to note that at the time this agreement was drafted, Williams, Jr., did not live with his father, but rather, lived in Tennessee with his mother, Audrey Williams; it appears, then, that Hank Williams attempted to provide the opportunity for closer parent-child relationship with Stone, who was to live with him, than that being enjoyed by his other child); 5) Lillian Stone, Irene Smith, and other family members acknowledged and publicly held the child out as the daughter of Hank Williams; and 6) the records of the Montgomery County Department of Public

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recognizes the right of the child to inherit through intestate succession. In brief response to the argument that Stone is barred from establishing her rights in the estate by operation of the doctrines of res judicata and collateral estoppel, we note the following. First, with regard to the issue of Stone's paternity, it is clear from the record that this issue was not adjudicated in the 1967 and 1968 proceedings. The court stated that it "[did] not believe that it [was] necessary to make this . . . determination." Furthermore, the issue of Stone's paternity was not appealed to this Court, and therefore, no arguments concerning the issue of her paternity are material. Finally, as for the issues regarding Stone's rights that were adjudicated in the 1967 and 1968 proceedings, the fact that those determinations were influenced by legal fraud on the court renders the doctrines of res judicata and collateral estoppel inapplicable, especially in this case, which involves the illegitimate child's right to share in the proceeds of copyright renewals that admittedly would have been payable to her as an illegitimate had her paternity not been concealed. See Code 1975, § 43-8-48; and *Cotton v. Terry*, 495 So. 2d 1077 (Ala. 1986). We recognize that the law at the time of her father's death had not yet recognized the third method of legitimation for the purpose of

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Welfare repeatedly document that Stone's natural father was Hank Williams. Therefore, unlike many cases in which the alleged father denies paternity and wishes to have nothing to do with the child, this is a case in which the father not only wished to accept responsibility for the child, but convinced the mother to give the child up, so that it might live with him and be reared by him.

intestate succession, i.e., a judicial determination of paternity; however, we also recognize that the law as it existed at that time has since been found to be unconstitutional by the United States Supreme Court in *Trimble v. Gordon*, 430 U.S. 762 (1977), and by this Court in *Everage v. Gibson*, 372 So.2d 829 (Ala. 1979).

In an action, such as the present one, that is not time-barred and is properly before this Court, we are bound to apply a constitutional law as it exists at the time the appeal is heard. This situation has been addressed by this Court and the Court of Civil Appeals in the cases of *Cotton v. Terry*, 495 So. 2d 1077 (Ala. 1986); *Abrams v. Wheeler*, 468 So. 2d 126 (Ala. 1985); and *Free v. Free*, 507 So. 2d 930 (Ala.Civ. App. 1986).

In *Cotton*, 495 So. 2d 1077 (Ala. 1986), an illegitimate child brought an action to establish paternity under Code 1975, § 43-8-48(2)(b), 11 years after the death of the alleged father. In construing § 43-8-48(2)(b), this Court held:

> "It may be seen from the plain language of the statute that paternity of an illegitimate child may be established *after the death of the father* through an adjudication supported by clear and convincing evidence. *When so established, such a child may inherit from the father through intestate succession.*" (Second emphasis added.)

Cotton, 495 So. 2d at 1079. In *Cotton*, as in the present case, there was clear evidence that the alleged father recognized the child as his and held himself out as the child's father. Yet, in *Cotton*, as in the present case, the law at the time of the alleged father's death would not have recognized the child as an heir. Even so, this Court

did not apply an unconstitutional law to the parties, but, rather, applied the law as it existed at the time of the appeal. Also, in *Abrams v. Wheeler*, 468 So. 2d 126 (Ala. 1985), an illegitimate child brought a paternity action before the death of the father, but after the expiration of the two-year limitations period that had been adopted in *Everage*, 372 So. 2d 829 (Ala. 1979). However, this Court refused to apply the two-year limitations period because it had since been found to be unconstitutional. Instead, it applied the law as it existed at the time of the appeal, and found the action not time-barred. Again, in *Free v. Free*, 507 So. 2d 930 (Ala.Civ. App. 1986), an illegitimate child brought an action under § 43-8-48(2)(b), not only after the death of the father, but also 20 years after the child had reached the age of majority. Despite the arguments by the legitimate heirs, the Court of Civil Appeals refused to apply the law in effect at the time of the death of the father or at the time of the birth of the child because that law had since been found unconstitutional.[24]

To the extent that there remains a question of the effect of a subsequent adoption on the right to establish paternity, we address that issue briefly. Code 1975, § 43-8-48(1), part of the Probate Code, states:

> "An adopted person is the child of an adopting parent and not of the natural parents . . . ."

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[24] While the paternity action is not an issue in the present case, it is interesting to note that Stone brought this action to set aside the former judgments and to declare her rights in her natural father's estate within 11 years after reaching the age of majority, which compares favorably with the delay in *Cotton*, 495 So. 2d 1077 (Ala. 1986), and *Free*, 507 So. 2d 930 (Ala. Civ. App. 1986).

In addition, Code 1975, § 26-17-6(e), part of the Alabama Uniform Parentage Act, provides:

> "If the child has been adopted, an action [to establish paternity under this section] may not be brought."

The trial court in the 1968 proceedings was erroneously of the opinion that the fact that Stone had twice been adopted acted as a bar to her recovery under the predecessors to these statutes. The crucial fact that the trial court failed to recognize in this case was that Stone had not been adopted at the time of her natural father's death. Therefore, any right that she had to inherit from his estate would have vested *at the time of his death* and would not have been affected by her subsequent adoption some two years later.

We do not believe that, in drafting these statutes, the legislature intended to cut off the right of an "after-adopted" child to inherit from its natural parent's estate.[25] Construing these statutes liberally, in order to further the trend of ameliorating the "harsh rule" of the common law, which had been overturned in 1968 by the United States Supreme Court, and which had been criticized by this Court and by the trial court in 1968, we believe that these statutes are to be read to protect, rather than cut off, an "after-adopted" child's right to inherit

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[25] In fact, in 1954, at the time of Stone's adoption, Alabama's law provided specifically that "[n]othing in this chapter dealing with adoption shall be construed as debarring a legally adopted child from inheriting property from *its natural parent or other kin*." Code 1940, Tit. 27, § 5. (Emphasis added.)

from its natural parents. We hold, therefore, that because Stone had not been adopted at the time of her natural father's death, her rights in his estate had already vested, and, therefore, these statutes do not apply.[26]

Relief Granted

We have noted throughout this opinion the unique character of this case. In fashioning an appropriate remedy, we again take these peculiar circumstances into consideration.

This Court is ever mindful of the policy concerns surrounding the finality of judgments. At the same time, we cannot ignore the pleas for relief of an innocent party who has labored under judgments procured by legal fraud and suppression, and based upon a completely erroneous view of the applicable law, at a time when she was not only a minor but had no one except a guardian ad litem fighting for her rights, and he was effectively foreclosed from establishing them.

We further recognize that when an illegitimate child and a decedent's estate are involved, as is the case here, the law must protect two additional state interests – the right of the illegitimate child to inherit on a par with any legitimate children, and the important state interest in the just and orderly disposition of the decedent's estate.

We also recognize that

> " 'where the rights and obligations of the parties are necessarily blended in the judgment, and are

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[26] It should be apparent that the time lapse approved in this case may not be approved in other factual settings.

> thus dependent one upon the other, though they be not strictly joint, the appellate court will render such judgment as will permit and require the entire controversy to be settled in one proceeding, in which the rights and liabilities of all parties may be considered and consistently determined.' "

City of Tuscaloosa v. Fair, 232 Ala. 129, 136-37, 167 So. 276, 282 (1936), overruled in part on other grounds by *Jacks v. City of Birmingham*, 268 Ala. 138, 105 So.2d 121 (1958) (quoting *North Alabama Traction Co. v. Hays*, 184 Ala. 592, 596 64 So. 39, 40 (1913). In view of all of the evidence in this case relating to concealment by the attorney and the administratrix of the estate of Stone's claims to the estate and of facts material to those claims, in addition to the fact that the state agencies involved, as well as the court itself, failed to protect her rights, we cannot but conclude that equity and justice require that the 1967 and 1968 decrees rendered in this matter be set aside, in part. Accordingly, in order to balance all of the equities involved in this case, we hereby reverse the summary judgment on Stone's third-party claim in which she asked that the estate be reopened, and we order that the 1967 and 1968 judgments rendered in this matter be set aside, in part, and that Stone is entitled to receive her proportionate share of any proceeds of the estate of her natural father, Hank Williams, including any income or interest, and of any copyright royalties, but prospectively only, from the date that she gave notice of her claim, August 5, 1985. The trial court's judgment which, insofar as it denied her request for punitive damages against the third-party defendants, is affirmed.

While we find that the third-party defendants' sureties, Gulf American and American States, are not liable on Stone's fraud claim, their contractual liability arising out of the surety bond issued for this estate is a matter that remains to be determined by the trial court on remand.

The judgment of the trial court, insofar as it denied Stone's first claim for relief, is reversed, and this cause remanded for a full hearing and settlement, in a manner consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

Hornsby, C.J., and Jones, Adams, and Steagall, JJ., concur.

Almon and Shores, JJ., dissent.

Houston and Kennedy, JJ., recused.

Catherine Yvonne Stone v. Gulf American Fire and Casualty Co., et al.

SHORES, JUSTICE (dissenting).

While I share my brothers' sympathy for the appellant, I cannot overlook the fact that every rule of law extant at every critical time in her life is against her position. Illegitimates could not inherit from their fathers at the time her father died (1953). They could not inherit at the time his estate was litigated in 1967 and 1968 when the Circuit Court of Montgomery County entered its final judgments to that effect. No appeal was taken from those final judgments.

The majority suggests that this Court might have changed the law had the guardian ad litem appealed the

1968 judgment. That assumption is speculation at best, but to give the appellant the benefit of that guess all of these years later is unprecedented.

The majority permits the appellant to challenge final judgments after approximately 17 years and more than 11 years after she reached majority in 1974, and would permit her to reopen the estate of her father, dead now for more than 36 years. All of this is permitted more than a decade and a half after a guardian ad litem appointed to represent her interests apparently concluded that he had discharged the duties of his office.

When are judgments final? The majority does not say. It attempts to temper its assault on the finality of these judgments by permitting the appellant to share in only a part of the decedent's estate: royalties paid since August 5, 1985, forward. Apparently, then, even the majority is unprepared to give the appellant full status as an heir to Hank Williams's estate. Apparently, she takes no interest in any real estate he may have had. She is allowed to participate in royalties payable only after August 5, 1985. Presumably, had Hank Williams's estate consisted of liquidated assets only, she could not have prevailed. I have never before heard of one's legal status as an heir turning on the nature of the assets of the estate. Not surprisingly, the majority cites no authority for its holding.

Because I feel bound to apply the law to these facts, sad though they are, I am compelled to dissent.

Almon, J., concurs.

APPENDIX I-2

Stone v. Gulf American Fire & Cas. Co., et al.

On Application for Rehearing

(Released Nov. 9, 1989)

MADDOX, JUSTICE.

Both Irene Smith and Jones, Murray and Stewart, P.C., have asked this Court to clarify its original opinion and to state that the summary judgments granted to them insofar as they denied Stone's request for damages against them are affirmed. Stone has again requested (1) that this Court reverse the trial court's summary judgment on her fraud claims against third-party defendants Smith and Jones, Murray and Stewart, and (2) that this Court modify its opinion to allow her to share in the estate of Hank Williams, Sr., from the date of his death in 1953, rather than from the date on which she made a demand on Hank Williams, Jr., in 1985.

In a brief styled "Petition of Randall Hank Williams for Leave to Appear for Purpose of Seeking to Vacate and Modify Opinion of July 5, 1989 and for Stay of Issuance of Certificate of Judgment Pending Further Proceedings," Williams, Jr., asks this Court to vacate and modify its original opinion on the ground that he was not a party to the appeal, and, therefore, that his due process rights were violated. Williams, Jr., argues that because Stone appealed only from the summary judgment granted on her third-party claim, she is barred by the doctrine of *res judicata*, because she did not appeal the summary judgment granted to him on his claim that she was not an

"heir." In short, Williams, Jr., claims that even though Stone has shown that she is the natural child of Hank Williams, Sr., and even if that determination in her favor was not appealed by him, she is now barred from inheriting because she did not appeal the adverse determination by the trial court that she was not an "heir," even though she has been judicially determined to be a natural child.

As set forth in the our [sic] original opinion, Williams, Jr., initiated this action by filing a declaratory judgment action seeking a declaration that Stone had no entitlement to Hank Williams's estate. Stone filed a counterclaim against Williams, Jr., and alleged that she was the natural daughter of Williams, Sr. Williams, Jr., joined issue on that claim.

Stone later filed a third-party complaint against Smith; Jones, Murray and Stewart, P.C.; and several fictitiously named parties, asking that the estate be reopened; she also asked for compensatory and punitive damages against third-party defendants Smith and Jones, Murray and Stewart, P.C. Gulf American Fire & Casualty Company and American States Insurance Company were also named as third-party defendants. The trial court entered a "Partial Summary Judgment" for Williams, Jr., on his complaint and entered a "Partial Summary Judgment" against Stone on her counterclaim and on her third-party complaint, finding "that there remains a justiciable issue raised in the Complaint filed by the Plaintiffs where the Court is specifically asked to declare that Williams, Jr. is the sole child of Williams, Sr. . . . [and that] [t]his issue as framed by the Complaint is still factually disputed and on that issue Summary Judgment is not appropriate even

though it is conceded by the Court that such a determination would not affect the outcome of the other issues raised by the pleadings."

As the trial court stated in its order on October 26, 1987, Williams, Jr., throughout the proceedings, subsequent to the time when the court entered its "Partial Summary Judgment" on July 14, 1987, objected to the trial court's proceeding forward to determine Stone's paternity, and excepted to the Court's interpretation of the pleadings.[1]

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[1] For a better understanding of the legal effect of the trial court's grant of "Partial Summary Judgment" and the continuance of the case for a determination of Stone's paternity, over the objection of Williams, Jr., we set out portions of the trial court's orders:

> "The instant suit was commenced by the Plaintiffs on September 10, 1985 by Complaint for Declaratory Judgment and Injunctive Relief. The Complaint was amended twice with the last amendment being filed on November 14, 1985. Stone filed her Counterclaim for Establishment of Paternity, Declaration of Rights and Imposition of Constructive or Resulting Trust on October 14, 1986. Her third party complaint was also filed on that date.
>
> "The issues raised by the motions for summary judgment presently before this Court are as follows:
>
> "Whether, because of her illegitimate status and her status as an adopted child, Stone is barred by applicable state law from now attempting to establish that she is an heir of the Williams, Sr. estate.
>
> "Whether Stone has ever been adjudicated to be a child of Hank Williams, Sr.

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"Whether, based upon the facts not now in dispute, the third party complaint states a cause of action upon which relief may be granted.

"* * * *

"Turning to the issue of the alleged status of Stone as the child (as opposed to legal heir) of Williams, Sr., it is clear from the record that there was never a judicial determination relative to the biological relationship between Stone and Williams, Sr. As the Court noted in 1967, it was not necessary for the Court to make such a determination in reaching its decision at that time as it was irrelevant. Thus, res judicata and collateral estoppel do not affect that question and it remains an issue of disputed fact between the parties.

"As to the third party claim filed by Stone, the Court is of the opinion that the main if not the entire thrust of the complaint revolves around an argued duty to disclose and the willful or fraudulent failure to do so. In 1953 Stone was not an heir to the estate of Williams, Sr., and she could not have been established as such under then existing law. If the existence of Stone had been made known to the Court by any of the third party defendants, it is assumed that the Court in adjudicating her claim would have applied the law as it then existed and would therefore have ruled that her claim was at that time invalid. The only obligation or duty that could be foreseeable in a situation such as exists in this case would be a requirement that the Third Party Defendants act in good faith according to the law of the State of Alabama as it existed at that time. The Court deems it unreasonable to impose upon them the duty to anticipate or foresee what the law should or might become in the future. At the time that the alleged

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fraudulent concealment purportedly occurred, a full disclosure to the Court or to interested third parties would have been superfluous. Therefore, the Court is of the opinion that the Third Party Complaint does not state a cause of action for which recovery can be had.

"It appears from the record and from a complete review of the proceedings in this case that the law requires that the Court enter a Partial Summary Judgment in this cause. The Court finds that there remains a justiciable issue raised in the Complaint filed by the Plaintiffs where the Court is specifically asked to declare that Williams, Jr. is the sole child of Williams, Sr. This issue as framed by the Complaint is still factually disputed and on that issue Summary Judgment is not appropriate even though it is conceded by the Court that such a determination would not affect the outcome of the other issues raised by the pleadings.

"Based on the foregoing it is therefore ORDERED, ADJUDGED, AND DECREED BY THE COURT AS FOLLOWS:

"The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the original Complaint is GRANTED as to all issues with the exception of whether or not the Defendant is the biological child of Williams, Sr.

"The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the Counterclaim is granted as to all issues.

"The Motions for Summary Judgment filed by the Plaintiffs and the Third Party Defendants as they relate to the Third Party Complaint are GRANTED on all issues.

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"Further proceedings in this cause are hereby set on the 25th day of August, 1987 at 10:00 a.m.

"DONE THIS THE 14TH DAY OF JULY, 1987.
"s/H. MARK KENNEDY
"CIRCUIT JUDGE"

On October 26, 1987, the trial judge entered a final judgment in the case, which held inter alia:

"Plaintiffs throughout these proceedings, subsequent to this Court's Order on Motions for Summary Judgment, have objected to this Court's proceeding forward and have excepted to the Court's interpretation of the state of the pleadings. Regardless of whether the question is framed as, is the Defendant the natural daughter of Williams, Sr., or is Williams, Jr. the only natural child, the court reiterates that the issue that remains before the court is the biological status of Defendant Stone. The court is of the opinion that that issue was raised by the Plaintiffs in the original Complaint, was joined by the Defendant, and now is a legitimate, justiciable issue.

"In lieu of making additional findings of fact, the Court adopts the findings as stated in the previous Orders of this Court. Based upon those findings and the additional evidence as submitted at the hearing of September 2, 1987, the court is of the opinion that it continues to have jurisdiction over the parties and of the subject matter and does hereby enter the Final Order.

"The Court upon consideration of the evidence does hereby find that Hank Williams, Jr. is not in fact the only natural child of Hank Williams, Sr. in that Defendant Catherine Yvonne Stone is also a natural child of Hank Williams, Sr."

Stone admittedly did not appeal the entry of the "Partial Summary Judgment"[2] entered in favor of Williams, Jr., on his complaint, and on Stone's counterclaim on July 14, 1987, likewise, Williams, Jr., did not appeal the adverse ruling that Stone was the natural child of Hank Williams, Sr., that was entered on October 26, 1987. Naturally, Stone did not appeal from the October 26, 1987, determination that she was the natural child of Williams, Sr., because it was favorable to her.

It is clear that the doctrine of *res judicata* does not apply in this situation, because that doctrine prohibits the *relitigation* of all matters that were or could have been litigated in a *prior* action. *Century 21 Preferred Properties, Inc. v. Alabama Real Estate Comm'n*, 401 So. 2d 764, 768 (Ala. 1981). Here, the complaint of Williams, Jr., and Stone's counterclaim and third-party complaint were litigated together.

As the trial court found, the main thrust of Stone's third-party claim involved "an argued duty to disclose and the willful or fraudulent failure to do so." This Court, in its original opinion, found that there was a duty, that there was a breach of that duty, and that Stone was entitled to have the estate reopened, but was not entitled to any damages against the third-party defendants. Williams, Jr., in his petition before us, claims that Stone's third-party complaint was only for *indemnification* and that "Stone's request in her third-party complaint to reopen the estate was simply meaningless surplusage."

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[2] In his petition before us, Williams, Jr., notes that the "Partial Summary Judgment" was "interlocutory and not subject to immediate appeal." See Rule 54(b), Ala. R. Civ. P.

We cannot agree. On original deliverance, we considered whether summary judgment was appropriate on this third-party complaint, which contained claims that were both in personam and in rem. Although we did not elaborate on the issue, we necessarily determined that Stone's request to have the estate reopened was an action in rem.[3] Additionally, this Court, on another appeal in this case, treated the original declaratory judgment action filed by Williams, Jr., as one filed pursuant to the provisions of Ala. Code 1975, § 6-6-225. In *Ex parte Stone*, 502 So. 2d 683 (Ala. 1986), this Court stated the following concerning the nature of the underlying declaratory judgment action:

> "Further support for the trial court's refusal to dismiss the Williams Group's complaint can be found in *Code of Alabama, 1975*, § 6-6-220, *et seq.*, the Declaratory Judgment Act. Specifically, § 6-6-225 provides:
>
> > " 'Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust in the administration of a trust or of the

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[3] In 1A C.J.S. *Actions* § 4 (1985), pp. 309-10, it is said:

> "As its name implies, an action in rem is an action or proceeding against a 'thing' or property, instead of a person; a proceeding to determine the state or condition of the thing itself; a judicial proceeding against the thing itself, which terminating in a valid judgment binds all the world. It has been said, however, that an action or proceeding in rem is difficult to define with accurate completeness, its exact nature being best understood by reference to its essential features."

> estate of a decedent, infant, incompetent or insolvent may have a declaration of rights or legal relations in respect thereto:
>
> > " '(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or other;
> >
> > " '(2) To direct the executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
> >
> > " '(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.'
>
> "The instant dispute plainly falls within the scope of this statute, and the declaratory judgment action filed by the Williams Group is thus a viable means of settling this dispute."

502 So. 2d at 686.

Stone's claim in her third-party complaint, in which she seeks to reopen the estate, is not essentially different from the prayer of Williams, Jr., for relief in his declaratory judgment action, wherein he specifically asked:

> "That in the event this Court *alters, modifies or otherwise changes the prior Orders and Judgments* in Civil Action Nos. 25,056 and 27,960 that this Court proceed to adjudicate and determine the rights of the parties hereto with regard to the Estate of Hiriam Hank Williams and the copyright and renewal copyright renewal copyright [sic] interests of the musical compositions of Hiriam 'Hank' Williams."

To apply the principles of *res judicata* or of collateral estoppel in this case would be most inequitable, and

would violate the spirit of both Rule 1, A.R.Civ.P. and Rule 1, A.R.App.P., and would elevate form over substance. It is clear that both the complaint of Williams, Jr., and Stone's third-party complaint asked for a determination of Stone's right to share in the estate. As we indicated in our original opinion, the claims of the various parties in this case are so intertwined and the factual situation is so unique that notions of fairness require that the entire controversy be settled in one proceeding.[4] See *City of Tuscaloosa v. Fair*, 232 Ala. 129, 167 So. 276 (1936), overruled in part on other grounds by *Jacks v. City of Birmingham*, 268 Ala. 138, 105 So. 2d 121 (1958). Stone did indeed appeal a judgment that held that she was not entitled to have the estate reopened. She convinced this Court that the record in this case showed that she was, in fact, entitled to have the estate reopened. To say that she was barred from raising her claims on that appeal because she did not also appeal a simultaneous judgment with the same holding would be unfair under *City of Tuscaloosa v. Fair* and the spirit of the Alabama Rules of Civil Procedure.[5]

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[4] It is perfectly clear that the judgment of the trial court on the declaratory judgment action and on the third-party complaint was premised upon an erroneous determination by the trial court that even if Stone was a natural child of Williams, Sr., she was not an "heir."

[5] The July 14, 1987, judgment of the trial court adjudicated all claims of the parties except Stone's claim that she was a natural child of Williams, Sr. Williams, Jr., strongly resisted the trial court's jurisdiction to make the subsequent finding. Also, it should be remembered that the trial court granted the third parties' motion for a *summary judgment*, and although the

(Continued on following page)

Even though we hold that the third-party action seeking to reopen the estate was in rem and that Williams, Jr., essentially asked for the same relief in the original declaratory judgment action that Stone requested in her third-party complaint, we, nevertheless, have carefully considered the argument of Williams, Jr., that, because Stone did not appeal the summary judgment entered in favor of him on his declaratory judgment complaint, this Court should not have determined, on this appeal, whether Stone was entitled to have the estate reopened and to share in the estate because he was not a party to the appeal.

This Court, on original submission, carefully considered whether it should allow this estate to be reopened. The dissenting Justices were of the opinion that we should not permit it to be reopened. On original deliverance, we noted "throughout [the] opinion the unique character of this case," and that "[i]n fashioning an appropriate remedy, we [took] these peculiar circumstances into consideration."

Although the judgments appealed from were summary judgments, there was voluminous evidence presented, much of which we took into consideration in fashioning

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(Continued from previous page)

judgment was not specifically made final and appealable pursuant to the provisions of Rule 54(b), Ala.R.Civ.P. (it was denominated a "Partial Summary Judgment" by the trial court), it would not be in keeping with the spirit of the Alabama Rules of Civil Procedure to hold that Stone would now be precluded from sharing in the estate, especially when Williams, Jr., specifically asked that Stone's claim be adjudicated pursuant to Ala. Code 1975, § 6-6-225.

our order on original deliverance. The basic facts upon which our legal determination was made were not disputed; therefore, we were presented with questions of law, considering those admitted facts. As the original opinion shows, this Court carefully considered the rights of individuals, including petitioner Williams, Jr., who had relied upon the prior decrees that this Court held were due to be set aside, and our judgment was not unanimous; there were dissenting views.

On application for rehearing, we have carefully considered Stone's argument that we should allow the estate to be reopened from the beginning, and we have considered very closely the argument of Williams, Jr., that we should not let Stone share at all, even though she has been judicially declared to be the natural daughter of Williams, Sr. We believe we reached a just and equitable result on original deliverance, and we are of the opinion that the petition of Williams, Jr., for leave to appear for the purpose of seeking to vacate and modify this Court's July 5, 1989, opinion is due to be denied. In reaching this conclusion, we apply the statutory principle in Code, 1975 § 12-22-70, which is merely declaratory of an appellate court's power, that "[t]he appellate court may, upon the reversal of any judgment or decree, remand the same for further proceedings or enter such judgment or decree as the court below should have entered or rendered, when the record enables it to do so." The record in this case allows us to do that, because the facts of the case have been fully developed in this record, and the evidence is either undisputed or without material conflict. In such a case, the general rule particularly applicable as

stated in 5B C.J.S. Appeal and Error § 1925 (1958), pages 425-27:

> "The general rule that the appellate court may, on reversal, render or direct final judgment is particularly applicable where the facts of the case have been fully developed on the trial, and there is nothing on which the party against whom reversal was made could strengthen his case or ground further proceedings, and it appears from the record that the evidence on another trial would be substantially unchanged."

Because we are of the opinion that Stone is not precluded by *res judicata* or collateral estoppel from having the estate reopened and because we believe that, based on the facts of this case, which were fully developed in this record and on the further fact that the position advanced by Williams, Jr., that Stone was not an "heir" was adequately presented by other parties on this appeal, and based on this Court's independent consideration of his position in view of the in rem nature of the proceeding, we cannot see how Williams, Jr., could strengthen his position on the law of this case. In fact, since original deliverance, we have located another case which appears to support the result we reached. The Supreme Court of Mississippi recently stated in *Collier v. Shell Oil Co.*, 534 *So.*, 2d 1015, 1017 (Miss. 1988): "One who has acquired title by operation of law under prior interpretation of the law regulating descent and distribution must yield to a subsequent change of interpretation." See also *Reed v. Campbell*, 476 U.S. 852 (1986) (*Trimble v. Gordon*, 430 U.S. 762 (1978), can be applied retroactively).

Based on the foregoing, we deny the petition of Randall Hank Williams, Jr., and we overrule the application

for rehearing filed by Stone, and we affirm the entries of summary judgment for Smith and Jones, Murray, and Stewart, P.C., on Stone's claim for fraud.

PETITION OF RANDALL HANK WILLIAMS, JR., DENIED; APPLICATION FOR REHEARING BY STONE OVERRULED; OPINION EXTENDED; AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Jones, Adams, and Steagall, JJ., concur. Almon and Shores, JJ., dissent.

Hornsby, C.J., and Houston, and Kennedy, JJ., recused.

Catherine Yvonne Stone v. Gulf American Fire & Casualty Co., et al.

SHORES, JUSTICE (dissenting).

The majority excuses its disregard of the law by calling this a unique case, but it cannot escape the fact that Williams, Jr., won the controversy between him and Stone in the court below and that Stone did not appeal that judgment. That judgment became final, and it decided the issue of whether Stone could share in the estate of Hank Williams, Sr. As the *Restatement (Second) of Judgments* § 33 (1982) states:

> "A valid and final judgment in an action brought to declare rights or other legal relations of the parties is conclusive in a subsequent action between them as to the matters declared, and, in accordance with the rules of issue preclusion, as to any issues actually litigated by them and determined in the action."

Stone appealed a judgment entered in her impleader action against certain other third parties. Williams, Jr.,

was not before this Court. Yet this Court has decided that Williams, Jr., now loses the case between him and Stone and by doing so refuses to follow all of the applicable substantive law pertinent to the issues and now disregards the procedural rules as well. If this case were not so unique, the issues between Williams, Jr., and Stone that were decided by a court of general jurisdiction in favor of Williams, Jr., would be settled forever because they are *res judicata*. As Professor Moore has written:

> "If an appeal is taken from only part of the judgment, the remaining part is res judicata, and the vacation of the portion appealed from and remand of the case for further proceedings does not revive the trial court jurisdiction of the unappealed portion of the judgment."

1B J. Moore, *Moore's Federal Practice* ¶0.404 (2d ed. 1988).

I think the Court's action violates the constitution of this state and the Constitution of the United States in that it directly affects property rights of Williams, Jr., that were vested, if not at the time the estate of Williams, Sr., was finally closed, then surely by the entry of final judgment in his favor in his declaratory judgment action, which this Court held was the proper way to finally determine whether Stone had an interest in the estate. As Professor Moore has said in commenting upon the failure of a court to give *res judicata* effect to binding prior orders:

> "The due process clause of the Fourteenth Amendment should preclude a state from subsequently restricting or refusing effect to one of its judgments as res judicata beyond a certain point. The reasons for this conclusion are: judicial rights were vested by the judgment; they

> may be divested by the usual judicial remedies of direct attack, and remedies to enjoin or otherwise obtain relief from the judgment; just as a party may not arbitrarily be bound by a judgment, so he may not arbitrarily be deprived of his rights under a valid judgment. And a state constitutional due process provision would similarly act as a check upon state power to deprive a party unjustly of vested rights in a judgment rendered by the state court."

1B J. Moore, *Moore's Federal Practice* ¶0.406 (2d ed 1988).

It has often been said that hard cases make bad law. This case demonstrates that unique facts can result in a disregard for all law.

Almon, J., concurs.

APPENDIX J-1

IN THE CIRCUIT COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, and WESLEY H. ROSE and ROY ACUFF, as TRUSTEES in LIQUIDATION for STOCKHOLDERS of FRED ROSE MUSIC, INC., both TENNESSEE CORPORATIONS,	*	
PLAINTIFFS,	*	
vs.	*	CIVIL ACTION NO. 85-1316-K
CATHERINE YVONNE STONE,	*	
DEFENDANT.	*	
CATHERINE YVONNE STONE,	*	
COUNTER-CLAIMANT,	*	
vs.	*	
RANDALL HANK WILLIAMS,	*	
COUNTER-DEFENDANT.	*	
CATHERINE YVONNE STONE,	*	
THIRD PARTY PLAINTIFF,	*	
vs.	*	
GULF AMERICAN FIRE & CASUALTY COMPANY; AMERICAN STATES INSURANCE COMPANY; JONES, MURRAY & STEWART, P.C.; IRENE SMITH; THE ESTATE OF ROBERT B. STEWART; et al.	*	
THIRD PARTY DEFENDANTS.	*	

FINAL ORDER ON MOTIONS FOR SUMMARY JUDGMENT

This Cause comes before this Court upon an Action for Declaratory Judgment filed by Randall Hank Williams (hereinafter referred to as Williams, Jr.), Wesley H. Rose and Roy Acuff, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc. against Catherine Yvonne Stone (hereinafter referred to as Stone), as Defendant.

The Complaint as amended seeks to have the Court declare that Stone has no entitlement to any proceeds or royalties from the Estate of Hiriam "Hank" Williams (hereinafter referred to as Williams, Sr.), that, as an adopted child she is barred from attempting to establish that she is a child of Willliams, [sic] Sr. and that Williams, Jr. is the sole child of Williams Sr. and that Stone has never been adjudicated, under the laws of the State of Alabama, to be the Child of Williams, Sr. The Complaint further seeks to have the Court determine that Stone is barred from now attempting to establish that she is a child of Williams, Sr. by the applicable statute of limitations, the doctrine of laches, waiver and estoppel, and, because of this Court's previous judgments and orders. Finally, Plaintiffs pray that this Court will declare that Williams, Jr. is the sole child and sole heir of Williams, Sr., and thus is the sole person with rights in and to the Estate of Williams, Sr., including, but not limited to, rights in musical compositions, recordings, copyrights, use of the name and likeness of Williams, Sr., and all other tangible and intangible rights deriving from Williams, Sr.'s estate.

Simultaneously with the answer filed by Stone, a counterclaim was filed against Williams Jr. on October 14, 1986. In said counterclaim, Stone alleges that she is the natural daughter of Williams, Sr. and as such is entitled to one-half of the proceeds of his estate. She prays for the entry of judgment that establishes her paternity, and awards her her proportionate interest in the proceeds of the Williams, Sr. estate. She requests that a constructive or resulting trust on all monies derived by Williams, Jr. from the estate of Williams, Sr. be imposed.

Subsequent to her counterclaim, Stone filed on October 24, 1986, a third party complaint against Gulf American Fire and Casualty Company (hereinafter referred to as Gulf American), American States Insurance Company (hereinafter referred to as American States), Jones, Murray & Stewart, P.C., Irene Smith, and the Estate of Robert B. Stewart. The third party complaint alleges that there was an intentional, willful and fraudulent concealment from the Court from 1953 through 1967 of Stone's identity and claim as a natural child of Williams, Sr. It further states that there was a conspiracy to defraud the Court and Stone by purposefully concealing pertinent information and theories that would presumably have entitled Stone to a share in the proceeds of the Williams, Sr. estate. Stone files a claim for relief against the sureties for payment on the surety bond issued by Gulf American and its successor American States on the administrator's bond issued in connection with the estate of Williams, Sr. Pursuant to the third party complaint, Stone requests that the estate be reopened and all previous orders of the Court affecting her status be declared null and void, that she be

allowed to share in a proportionate interest in the Williams, Sr. estate and that she recover general and punitive damages against all third party defendants.

At the present time, four motions for summary judgment are presently pending before the Court on behalf of the following:

1. Williams, Jr., Wesley Rose and Roy Acuff,
2. Irene Smith,
3. Jones, Murray & Stewart, P.C. and
4. Gulf American and American States.

By Order of the Court, pursuant to an agreement of the parties, the Estate of Robert B. Stewart was dismissed on April 3, 1987.

The Court has reviewed the various motions submitted along with the arguments and briefs of learned counsel and is now of the opinion that the Court has jurisdiction over the parties and of the causes of action. Pursuant thereto, the Court does hereby proceed to enter this its final order on all motions for summary judgment.

For the purposes of this order, the Court makes the following findings of fact which, in its opinion, are not in dispute.

On October 15, 1952, Williams, Sr. and Bobbie W. Jett entered into a written agreement relative to the custody and support of an unborn child that was being carried by Jett. The agreement was prepared by and executed in the presence of Robert B. Stewart, an attorney in the general practice of law in Montgomery County, Alabama.

The agreement stated that Bobbie W. Jett was pregnant and that Williams, Sr. may have been the father of said child. It was obviously the desire of the parties to agree to the support and custody of the child through the provisions of the agreement that they entered into. The agreement called for Williams, Sr. to provide room and board for Jett up until delivery, to provide periodic support for Jett pending the birth and to pay for all necessary expenses incurred for the actual delivery.

Jett was to be provided with a one way ticket to California by Williams, Sr. within 30 days after the birth of Jett's child and physical custody of the child would vest in Williams, Sr.'s mother, Mrs. Lillian Williams Stone. Specifically the agreement provided:

> After the birth of said child, both parties agree that it shall be placed with Mrs. W.W. Stone of Montgomery, and that she shall have full custody and control of said child for a period of two years after its birth and that during said time the said Hank Williams will provide and pay for a nurse and will pay all necessary expenses for clothing, food, medical care, and other attention which is required by the child during said two year period. . . . Beginning at the third birthday of said child, its custody and control shall vest in the said Hank Williams and the child shall live with him continuously and be wholly and completely supported by him, and cared for by him until it reaches its fifth birthday at which time the custody of the child shall be divided between both parties; . . . The responsibility for the support of said child shall be in Hank Williams both during the times when he has custody of the child and when it is visiting its mother.

> In view of the fact that the paternity of said child is in doubt and is not to be in any way construed as admitted by this agreement which is made solely because of the possibility of paternity, the said Bobbie W. Jett does hereby release the said Hank Williams from any and all further claims arising out of her condition or the birth of said child.

William, Sr. died intestate on January 1, 1953.

Lillian Williams Stone filed for letters of administration for the Williams estate in the Probate Court of Montgomery County, Alabama in January 1953. In her petition, she listed the heirs and distributees of the intestate estate as:

> Billie Jean Jones, "who states she is the widow",
> Randall Hank Williams, Jr.,
> Mrs. Irene Williams Smith, a sister
> Elonzo H. Williams, father and
> Lillian S. Stone, mother.

The Petition was prepared by Robert B. Stewart, the same attorney who had prepared the Williams, Sr./Jett agreement several months earlier.

Five days after the death of Williams, Sr., Jett gave birth to Stone who was given the name of Antha Bell Jett. By agreement, the baby was left with Mrs. Lillian Stone and Jett left the state.

On or about January 28, 1953, Lillian Stone contacted the Montgomery County Department of Pensions and Security about the possibilities of adopting the baby. In explaining how she came to have physical custody of the baby it is probable to assume as correct that she reported to them that Jett was the mother of the child and that her son, Williams, Sr. was the father.

The record of these proceedings seems to indicate that Lillian Stone, on several occasions told others that the baby had been fathered by her son.

In July of 1953 a petition for adoption was filed by Lillian Stone and her husband for the adoption of Antha Bell Jett (Stone) in the Probate Court of Montgomery County, Alabama. An interlocutory order of adoption granting temporary custody of Stone to William W. Stone and Lillian Stone was issued on September 21, 1953. The Montgomery County Department of Pensions and Security began supervision on that date and continued the same until a final decree of adoption was entered on December 23, 1954. At that time an adoptive parent/child relationship between William Wallace Stone and Lillian Williams Stone and Antha Bell Jett (Stone) was established. The child's name was changed to Catherine Yvonne Stone.

Lillian Williams Stone died on February 26, 1955. Stone's adoptive father was unwilling to continue the parent child relationship that had been established through the original adoption decree and Stone was made a ward of the State of Alabama by decree of the Juvenile Court of Montgomery County, Alabama on April 22, 1955. She was placed in the home of Mrs. Ilda Mae Cook as a foster child.

In February of 1956, Stone was transferred by the Montgomery County Department of Pensions and Security to Mobile, Alabama to the home of George Wayne and Mary Louise Deupree. Although it was initially another foster home placement, the Deupree's ultimately instituted adoption proceedings and on April 23, 1959

Stone was again adopted. Thus, a second adoptive/parent child relationship was established for Stone, this time with Mr. and Mrs. Deupree. Stone's name was then changed to Cathy Louise Deupree.

The record contains correspondence between the attorney for the estate, Robert B. Stewart, and one Harold Orenstein, legal counsel for Wesley Rose. The correspondence was transmitted in 1962 and it contains discussions concerning the status of Stone. The Orenstein letter in pertinent part reads:

> D. *CATHERINE YVONNE STONE* – From the documents which you have furnished to me, Catherine Yvonne Stone . . . was returned to the State of Alabama Welfare Department after the death of Lillian Stone, and then re-adopted by persons unknown. Nowhere in the documents is there an indication of the names of the natural parents of Catherine Yvonne Stone. We assume that these documents were the ones that you mentioned had been sealed and could never be re-opened. . . . It would appear that some token payment to the State of Alabama Welfare Department . . . on behalf of this child may or may not be indicated. There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could predict their valuation. We feel that a nominal payment might forever cut off the right of this child to the renewals.

In response, Stewart wrote in pertinent part:

> None of this would seem to affect the child's statutory right to copyright renewal. (Referring to the right of Stone to receive a homestead share in the Lillian Stone estate). The adoption might affect any right to which the child was entitled through the father. . . . (W)e may be

faced with a difficult problem, and certainly one we would not want to litigate.

As possible alternatives we can:

a. consider that by the adoption all rights under the renewal statute have been lost.

b. Try to explain the matter to our Welfare Department which does not want the child to know its background, but which would probably feel a duty to protect any right the child might have, and hope for a cooperative settlement and court approval.

c. Petition the court for approval of an agreement between Acuff-Rose and the Guardian, requesting that a guardian ad litem be appointed for Randall and another for all other possible minors who might claim a similar renewal right. If we use this procedure, the guardian ad litem will have to know what we are talking about, and might be vigorous in asserting this right. Much would depend on the person appointed, over which we have no control.

I do not believe we can make a token payment to the Welfare Department since any payment which would bar a later claim would have to be made with the understanding of the facts by the court.

It was not until 1967 that any Court having jurisdiction over the estate of Williams, Sr. was advised of the possibility that Williams, Sr. may have died leaving a child other than Williams, Jr. That fact surfaced in two actions then pending before the Circuit Court for Montgomery County, Alabama.

In that year, Audrey Williams, the mother of Williams, Jr. filed a petition for final settlement in the Williams, Sr. estate and a petition to vacate and for accounting and transfer in the guardianship estate of Williams, Jr. then a minor. At that time, Irene Smith was the administratrix of the Williams, Sr. estate and the Alabama guardian of Williams, Jr. in the guardianship estate. In the capacity as aforementioned, Smith filed her response to the petitions filed by Audrey Williams. It was in those answers that the question of existence of the legal rights of Stone and any other unknown heirs were first raised. In each proceeding the Court appointed Drayton N. Hamilton, Esq. to be the guardian ad litem to represent the interest of any minor person(s) who might have an interest in the matters involved in the proceedings.

The record reflects that Hamilton had previously served as guardian ad litem for Stone in proceedings relating to the estate of Williams Sr.'s mother, Lillian Stone, in 1963. It appears, however, that at that time Hamilton knew only that she was an adopted child of Lillian Stone. According to Hamilton, the first time that he became aware that Stone may possibly have been fathered by Williams, Sr. was after he had been appointed guardian ad litem in the proceedings initiated by Audrey Williams.

In 1967 and 1968 Stone lived in Mobile with her adoptive parents Mr. and Mrs. Deupree. The Deuprees knew of the pendency of the proceedings in Montgomery and had conversations with Hamilton concerning those proceedings. The record seems to establish that Stone's adoptive parents were not interested in pursuing the

matter on behalf of their daughter. Hamilton continued his representation and actively participated in all phases of the proceedings.

A trial was conducted on the merits before Honorable Richard P. Emmet of the Circuit Court of Montgomery County, Alabama. At trial Hamilton argued that Stone was the legitimate daughter of Williams, Sr. through the operation of law as applied to the October, 1952 agreement between Williams, Sr. and Jett. He posited that the agreement met the statutory requirements for legitimation in the State of Alabama. In the alternative, he challenged existing state law on constitutional grounds. In summary he argued:

> We conclude that the Court must determine that the child . . . is the natural child of Hank Williams; secondly, that the said child is the legitimate daughter of Hank Williams under Alabama law and the facts of the case; thirdly, that even if the child has not been legitimated she should share in the estate as the natural daughter of Hank Williams and lastly, that there can be but little question that this child has a present right under the Copyright Laws of the United States to share in the income from the Hank Williams compositions. . . .

The Court issued its first Order on December 1, 1967. It was in the Williams, Sr. Estate case. In the Order the court found as follows.

> The principle issue raised by the Petition . . . and by the Answer . . . is the right of Randall Williams to inherit from his father's estate as the sole beneficiary. The pleadings, the testimony, and the exhibits raise the question of the right of another child to receive a part of the assets of this estate as a natural child which has been

> legitimated (sic) under Alabama's statutory procedure. The Guardian Ad Litem has also sought a determination by the Court that this child, even if not legitimated as required by statute, is a natural child of Hiriam Hank Williams and as such has certain right under the Federal Copyright Statutes. *The Court does not believe it is necessary to make this latter determination* (emphasis added).
>
> In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiriam Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams. . . .
>
> IT IS THEREFORE, CONSIDERED, ORDERED AND DECREED by the Court:
>
> . . . . 2. That Randall Williams is the sole heir of his father, Hiriam Hank Williams, and is the only beneficiary of his estate now administered by this Court.

The Order of the Circuit Court in the guardianship estate case was issued on January 30, 1968. In that order, the Court went further and made additional findings and drew additional conclusions of law relative to the status of Stone. The Court found:

> Addressing itself to the question of the child born to one Bobbie W. Jett, the Court finds from the evidence the child does not have any right in the copyrights or the renewal of those rights of the late Hiriam (Hank) Williams.

> The Court is impressed with the argument of the Guardian Ad Litem. The Court adopts the sound reasoning advanced in brief that the time is long past due when illegitimate off-spring should be afforded adequate property rights. The Common law is severe in calling such off-spring a "non-person" or a "person of no blood".
>
> However, the evidence in this case is without dispute, this off spring of one Bobbie W. Jett is not now a "person of no blood".
>
> The evidence shows the child has been . . . adopted. . . . By fiction of law only but with the same effect as if natural, the child has been infused with the blood of the adopting parents. The evidence shows the final decree of adoption occurred almost ten years ago. The evidence shows the adopting parents were fully informed by the state authorities of these proceedings. The evidence shows the adopting parents chose not to pursue any action in regard to these proceedings.
>
> . . . It is, therefore, ORDERED, ADJUDGED and DECREED by the Court as follows:
>
> . . . 2. That the child born to one Bobbie W. Jett is not an heir of the late Hiriam (Hank) Williams within the meaning of the Copyright Law.

Neither the December 1, 1967 Order in the Estate proceeding nor the January 30, 1968 Order in the Guardianship Proceedings was appealed, although the Guardian Ad Litem sought permission from the trial court to make such an appeal. Those Orders therefore became final pursuant to applicable Alabama law.

Following the death of Williams, Sr., Fred Rose Music, Inc. and Milene Music, Inc., and their

predecessors in interest paid to the estate of Williams, Sr. royalties arising from the usage of the songs composed by Williams, Sr. Following the 1967 and 1968 Orders of the Circuit Court for Montgomery County, and in reliance thereon, royalties were paid to Williams, Jr. as the sole heir of Williams, Sr.

It is interesting to note that even in the light of the Circuit Court Orders, Robert Stewart, who was appointed as the Administrator in 1969, presumably out of an abundance of caution, continued to set aside money for Stone. In a series of letters to the attorney for Williams, Jr., Stewart stated that "the last two distributions to Randall- . . . were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child." In April of 1974, Stewart advised counsel for Williams, Jr. that Stone had claimed her homestead which had been set aside for her in the Lillian Stone estate. Stewart wrote that Stone's "ancestry may well be reasonably obvious to her, and further trouble may ensue."

The Estate of Williams, Sr. would be closed in August of 1975 without further incident relative to the issue of Stone's rights, if any, to a share in said estate.

In January of 1974, Cathy Stone reached the age of majority. While attending the University of Alabama, she was informed by her adoptive mother that Williams, Sr. might be her father. Stone was also advised that the Circuit Court of Montgomery County was holding certain funds for her from the estate of Lillian Stone. Stone traveled to Montgomery and received the proceeds from the estate of her former adoptive mother. It appears from

the record that it was at about this time that Stone began to seriously seek information concerning her parentage.

From 1976 to 1979 Stone had several encounters with individuals that had knowledge surrounding her earlier years. It appears form [sic] the record that Stone had formed an opinion as to her parentage as early as the Fall of 1979. Stone continued to retrieve documents that bore on the issue throughout the period of 1979 through 1980.

On July 1, 1985 Stone filed an action in the Circuit Court of Montgomery County requesting that certain documents that had been placed under seal be released to her. On August 5, 1985 Stone wrote a demand letter to Williams Jr. and Acuff-Rose/Opryland advising them of Stone's claimed interest in Williams' copyrights. On September 12, 1985, Stone filed an action in the United States District Court for the Southern District of New York, Civil Action No. 85. Civ. 7133 JFK, relative to her alleged rights in the copyrights of musical compositions written in whole or in part by Williams, Sr.

The instant suit was commenced by the Plaintiffs on September 10, 1985 by Complaint for Declaratory Judgment and Injunctive Relief. The Complaint was amended twice with the last amendment being filed on November 14, 1985. Stone filed her Counter claim for Establishment of Paternity, Declaration of Rights and Imposition of Constructive or Resulting Trust on October 14, 1986. Her third party complaint was also filed on that date.

The issues raised by the motions for summary judgment presently before the Court are as follows:

Whether, because of her illegitimate status and her status as an adopted child, Stone is barred by applicable state law from now attempting to establish that she is an heir of the Williams, Sr. estate.

Whether, consistent with prior orders and judgments of this Court, Williams, Jr. is the sole heir of the Williams, Sr. estate and as such has exclusive rights to all proceeds generated in the past by the estate and in the future from copyrighted materials.

Whether Stone has ever been adjudicated to be a child of Williams, Sr.

Whether, based upon the facts not now in Dispute, the third party complaint states a cause of action upon which relief may be granted.

It is obvious from the record that if Stone is in fact the child of Williams, Sr. she is an illegitimate child who was subsequently twice adopted. It is also obvious from the record that Williams, Sr. died intestate. The issue that naturally arises is what rights an after-adopted illegitimate child has to assert a claim against her reputed biological father's estate.

The answer to that question within the context of this case appears to be none. The issue that inevitably follows that determination is what remedies are available to an illegitimate under Alabama law to establish paternity so as to have a bona fide claim to the proceeds of the intestate father's estate.

Presently, there are four ways in the State of Alabama to legitimate a child so that the child can inherit from an intestate father. Two of the methods require either the

marriage of the father and mother and recognition by the father of the child as his own or the filing of a formal written declaration attested by two witnesses. The third method relates to the procedure under the Alabama Uniform Parentage Act (hereinafter referred to as AUPA) which is codified in Section 26-12-1, *et. seq.*, Code of Alabama 1975 as amended. Finally, the fourth alternative is found in the Alabama Probate Code at Section 43-8-48 Code of Alabama 1975 as amended.

The Court is of the opinion that as to the Plaintiffs' claim and as to Stone's counterclaim, the above cited procedures that are presently available are the ones that shall be determinative of the issues that relate to them.

It is undisputed that neither of the first two procedures is applicable in this case. Williams, Sr. died prior to Stone's birth, he never married Stone's mother, and no formal declaration of paternity that met statutory requirements was ever filed.

The fact that Stone was twice adopted after birth acts as a bar to recovery under the AUPA, specifically Section 26-17-6-(e), supra. That section clearly provides that an adopted child may not bring an action to establish paternity under the Act.

In addition, the fact that Stone was twice adopted forecloses recovery under the Alabama Probate Code, Section 43-8-48, supra. That section clearly provides that an adopted person is the child of an adopting parent and not of the natural parents. Stone argues that the fact that she was unadopted at the time of Williams, Sr.'s death would remove her from the applicability of Section 43-8-48. The Court disagrees. At the time of Williams,

Sr.'s death there did not exist a legal relationship between Stone and Williams, Sr. that would entitle her to inherit. If that were the case, Section 43-8-48 would not even be applicable since that section becomes important only if one is attempting to establish that such a relationship does in fact exist.

Assuming arguendo that the Court determined that it should apply the law as it existed at the time of Stone's birth to the issues in this case, the Court is of the opinion that Stone would still be barred from recovery in her counterclaim. To prevail, Stone must establish the existence of a relationship between herself and Williams, Sr. that would allow her to have a valid claim against his estate. Because of the factual circumstances that exist, that becomes an impossibility irrespective of whether the Court applies existing law or the law of 1952.

The 1967 preceedings in the Circuit Court of Montgomery County involved the question of whether or not Stone was an heir of Williams, Sr. At that time, an illegitimate child could not inherit from its natural father unless the child had been legitimated. As Stone had not been lgitimated [sic], the Court held that Stone was not an heir and as a result not entitled to share in the estate. Although the law today differs from relevant applicable standards in 1967, the doctrines of res judicata and collateral estoppel nonetheless now preclude Stone's claim to a share in the William's, Sr. estate. Since the issue and claim by Stone that she is an heir and entitled to inherit was decided in the 1967 proceeding in which the parties were the same, she is thus barred from relitigating that identical issue and claim in this case.

Turning to the issue of the alleged status of Stone as the child (as opposed to legal heir) of William's Sr., it is clear from the record that there was never a judicial determination relative to the biological relationship between Stone and William's, Sr. As the Court noted in 1967, it was not necessary for the Court to make such a determination in reaching its decision at that time as it was irrelevant. Thus, res judicata and collateral estoppel do not affect that question and it remains an issue of disputed fact between the parties.

As to the third party claim filed by Stone, the Court is of the opinion that the main if not the entire thrust of the complaint revolves around an argued duty to disclose and the willful and or fraudulent failure to do so. In 1953 Stone was not an heir to the estate of Williams, Sr., and she could not have been established as such under then existing law. If the existence of Stone had been made known to the Court by any of the third party defendants, it is assumed that the Court in adjudicating her claim would have applied the law as it then existed and would therefore have ruled that her claim was at that time invalid. The only obligation or duty that could be foreseeable in a situation such as exists in this case would be a requirement that the Third Party Defendants act in good faith according to the law of the State of Alabama as it existed at that time. The Court deems it unreasonable to impose upon them the duty to anticipate or foresee what the law should or might become in the future. At the time that the alleged fraudulent concealments puportedly [sic] occurred, full disclosure to the Court or to interested third parties would have been superfluous. Therefore, the Court is of the opinion that the Third Party Complaint

does not state a cause of action for which recovery can be had.

It appears from the record and from a complete review of the proceedings in this case that the law requires that the Court enter a Partial Summary Judgment in this cause. The Court finds that there remains a justiciable issue raised in the Complaint filed by the Plaintiffs where the Court is specifically asked to declare that Williams, Jr. is the sole child of Williams, Sr. This issue as framed by the Complaint is still factually disputed and on that issue Summary Judgment is not appropriate even though it is conceded by the Court that such a determination would not affect the outcome of the other issues raised by the pleadings.

Based on the foregoing it is therefore ORDERED, ADJUDGED, AND DECREED BY THE COURT AS FOLLOWS:

The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the original Complaint is GRANTED as to all issues with the exception of whether or not the Defendant is the biological child of Williams, Sr.

The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the Counterclaim is GRANTED as to all issues.

The Motions for Summary Judgment filed by the Plaintiffs and the Third Party Defendants as they relate to the Third Party Complaint are GRANTED on all issues.

Further proceedings in this cause are hereby set on the 25th day of August, 1987 at 10:00 A.M.

DONE THIS THE 14th DAY OF JULY, 1987.

/s/ H. MARK KENNEDY
H. MARK KENNEDY
CIRCUIT JUDGE

Sterling Culpepper
David Johnson
Robert Black
James Hampton
Christian Horsnell
Richard Frank, Jr.
James E. Williams
F. Keith Adkinson
James A. Goodman/Vincent H. Chieffo
Alan Shulman
Stephen K. Rush
Thomas Levy

APPENDIX J-2

IN THE CIRCUIT COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, and WESLEY H. ROSE and ROY ACUFF, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., both Tennessee Corporations,	)	CASE NO. CV-85-1316-K
PLAINTIFFS,	)	
vs.	)	
CATHERINE YVONNE STONE,	)	
DEFENDANT.	)	

FINAL ORDER

This Cause now comes before this Court for Final Disposition pursuant to previous Orders and proceedings in this matter. Before the Court at this time are all forms of evidentiary matters, the pleadings as filed and post-trial briefs that have been submitted by learned counsel.

The Court on the date of the last hearing took under advisement certain offerings of evidence. The Court will now rule on the admissibility of those items and on any and all outstanding posttrial motions before proceeding to the merits of the remaining issue.

The following exhibits have been offered into evidence, objected to, and are pending admission by the Court:

Defendant's Exhibits 1, 5, 13, 14, 16, 17, 33, 35 & 41.

Upon review of the exhibits as outlined above, the Court does hereby sustain the objections to proffered exhibits nos. 1, 5, 13, 14, 16 and 17.

Upon review of the exhibits as outlined above, the Court does hereby overrule the objections to proffered exhibits nos. 33, 35 and 41 and the same are hereby admitted into evidence.

On October 7, 1987 Defendant filed a Motion to Strike the Posttrial Brief of Plaintiff. That Motion is Denied.

Plaintiffs throughout these proceedings, subsequent to this Court's Order on Motions for Summary Judgment, have objected to this Court's proceeding forward and have excepted to the Court's interpretation of the state of the pleadings. Regardless of whether the question is framed as, is the Defendant the natural daughter of Williams, Sr., or is Williams, Jr. the only natural child, the Court reiterates that the issue that remains before the Court is the biological status of Defendant Stone. The Court is of the opinion that that issue was raised by the Plaintiffs in the original Complaint, was joined by the Defendant, and now is a legitimate, justiciable issue.

In lieu of making additional findings of fact, the Court adopts the findings as stated in the previous Orders of this Court. Based upon those findings and the additional evidence as submitted at the hearing of September 2, 1987, the Court is of the Opinion that it continues to have jurisdiction over the parties and of the

subject matter and does hereby enter the following Final Order.

The Court upon consideration of the evidence does hereby find that Hank Williams, Jr. is not in fact the only natural child of Hank Willimas [sic], Sr. in that Defendant Catherine Yvonne Stone is also a natural child of Hank Williams, Sr.

DONE THIS THE 26TH DAY OF OCTOBER, 1987

/s/ H. Mark Kennedy
H. MARK KENNEDY
CIRCUIT JUDGE

Honorable Sterling Culpepper
Honorable David Johnson

APPENDIX K-1

IN THE MATTER OF THE ESTATE OF HIRIAM "HANK" WILLIAMS,	) IN THE CIRCUIT COURT) OF MONTGOMERY) COUNTY, ALABAMA, IN) EQUITY. Case) No. 25056

ORDER

This matter now coming on for hearing is submitted on the amended petition filed by Audrey M. Williams and Randall Williams, the Answer of Irene W. Smith, as Administratrix of the Estate of Hiriam Hank Williams, to the Petition as last amended, the Acceptance of his appointment and the Answer of the Guardian ad Litem to the Petition as last amended, the testimony as noted by the Register and stipulations entered into by the parties through their attorneys of record.

Counsel for the Williams Estate has advised the Court that he does not insist upon his motion to require security for costs and said motion should, therefore, be overruled.

The Court has carefully considered the testimony and the evidence presented by the parties in this case and helpful briefs filed by their attorneys.

The principal issue raised by the Petition as last amended and by the Answer of the Administratrix is the right of Randall Williams to inherit from his father's estate as the sole beneficiary. The pleadings, the testimony, and the exhibits raise the question of the right of another child to receive a part of the assets of this estate as a natural child which has been ligitimated under Alabama's statutory procedure. The Guardian ad Litem has

also sought a determination by the Court that this child, even if not legitimated as required by statute, is a natural child of Hiriam Hank Williams, and as such may have certain rights under the Federal Copyright Statutes. The Court does not believe it is necessary to make this latter determination.

In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiriam Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams.

The Petitioners and the Administratrix recognize in their pleadings that this estate should remain open because there are or may be unliquidated accounts due the estate, and pending amendments to the Federal Copyright laws make further administration advisable. This Court is, therefore, of the opinion that the Administration of this estate should continue, as it has in the past, under the supervision of this Court.

All issues presented by the pleadings in this case and not specifically decided should, therefore, be reserved.

The Court has considered the time spent and the expenses incurred by the Guardian ad Litem and is of the opinion that he is entitled to a reasonable fee and to be reimbursed for his actual expenses, and that said fee and expenses should be paid by the Estate.

IT IS, THEREFORE, CONSIDERED, ORDERED AND DECREED by the Court:

1. That the motion of Irene W. Smith as Administratrix to require the Petitioner to furnish security for costs is hereby overruled.

2. That Randall Williams is the sole heir of his father, Hiriam Hank Williams, and is the only beneficiary of his estate now administered by this Court.

3. That the fee of the Guardian ad Litem, Drayton N. Hamilton, is fixed at Two Thousand Dollars ($2,000.00), which includes his expenses through the date of trial.

4. All other matters are reserved.

5. The costs of these proceedings, including the fee and expenses of the Guardian ad Litem, are taxed against the Estate of Hiriam Hank Williams, for which execution may issue.

Done this 1 day of Dec, 1967.

/s/ Richard P. Emmet
Circuit Judge

APPENDIX L-1

IN THE MATTER OF THE GUARDIANSHIP OF THE ESTATE OF RANDALL HANK WILLIAMS, a minor.	:	IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA IN EQUITY CASE NO. 27,960

This cause comes on to be heard upon the pleadings, all as noted by the Register.

This Court finds it has jurisdiction of the cause and of the parties.

As to the question of jurisdiction of the cause, the Court rejects the contentions of Respondent Smith and Respondent Rose as to the application of any Statute of Limitation.

This Court has now exercised continuing jurisdiction of this guardianship for some fifteen years. In this or any other guardianship there occurs nothing during the course of the guardianship to which any Statute of Limitation applies insofar as any conduct between the guardian and ward. The inherent rules of equity jurisdiction would allow a subsequent review of any conduct by the guardian. The relationship existing between a guardian and a ward is never a relationship of opposing advocates. As such, the approval by the Court, exercising continuing jurisdiction of the guardianship, of the conduct of a guardian in any situation is subject to subsequent review by that Court upon additional evidence being presented. It matters not in what mode of pleading such evidence is

presented. Indeed, a Court, *ex mero motu*, should act upon such evidence. The only rule prescribed by law of the state is to protect the interest of the ward. Likewise, any third party desirous of contracting with the ward is subject to the same continuing jurisdiction.

The Court rejects further the contention that only upon actual and extrinsic fraud can the previous decree of *this* Court be vacated. The cases relied upon in this contention concern the vacating of decrees by one Court of other Courts' decrees. None of the cases cited concern an interest of a Court's Ward.

This Court, exercising continuing jurisdiction of the guardianship and being governed only by the rule of law which requires the best interest of the ward to be paramount, is allowed to weigh any legal evidence properly presented at any time now or subsequent as to any contractual relationship previously approved by this Court. There exists no limitation to this inherent right of equity in protecting a ward.

It follows that this Court has jurisdiction of this cause and has the duty at this time of looking further into the matter of this Court's Decree in this same cause dated March 19, 1963.

A finding of fact in this guardianship is incomplete without an incorporation of the facts elicited from the evidence in scores of other hearings in this case and in the Estate of Hiriam (Hank) Williams, Case No. 25,056, Fifteenth Judicial Circuit of Alabama.

This Court has carefully reviewed the evidence in its entirety. The review has not been in the light of any

narrow restrictions suggested by the contentions of jurisdictional or statutory limitations or burdens of proof as to actual and extrinsic fraud. This Court has weighed the evidence only in the light of the best interest of this ward. In this light, and with the benefit of hindsight in now looking back through the years to the year 1963, it is inescapable that the contract in question was then and is now in the best interest of the ward. The Court finds that the relationship created by the contract is provident for the ward.

The Court finds there are aspects of the relationship created by this contract which are not subject to the utmost clarity. These aspects concern the unpublished artistic work of the deceased father of the ward; the benefits of affiliation with the performing societies; and future royalty schedules being more completely detailed. The Court finds the best interest of the ward requires that these matters be spelled out in detail. The Court is aware that these questions might possibly be matters within the framework of the Estate, however, they have a direct bearing on the guardianship.

Addressing itself to the question of the child born to one Bobbie W. Jett, the Court finds from the evidence the child does not have any right in the copyrights or the renewal of those rights of the late Hiriam (Hank) Williams.

The Court is impressed with the argument of the Guardian ad Litem. The Court adopts the sound reasoning advanced in brief that the time is long past due when

illegitimate off-spring should be afforded adequate property rights. The common law is severe in calling such off-spring a "non-person" or a "person of no blood".

However, the evidence in this case is without dispute, this off-spring of one Bobbie W. Jett is not now a "person of no blood".

The evidence shows the child has been permanently adopted under the very excellent, wise, and beneficial direction of this State's Department of Pensions and Security. By fiction of law only but with the same effect as if natural, the child has been infused with the blood of the adopting parents. The evidence shows the final decree of adoption occurred almost ten years ago. The evidence shows the adopting parents were fully informed by the state authorities of these proceedings. The evidence shows the adopting parents chose not to pursue any action in regard to these proceedings.

The Court is of opinion that the Copyright Law as interpreted by the Supreme Court of the United States in *DeSylva v. Ballentine*, 351 U.S. 570; 100 L.Ed. 1415; 76 Sp. Ct. 974, preclude the inclusion of any heir other than the ward of this Court as having any right of renewal, provided the ward survives to the appropriate time.

Notwithstanding the proposed revision of the Copyright Law of this nation pending in the Congress, this Court retains the same opinion.

The pen of this Court cannot rest without one final finding. The attorney for this guardian and for the estate traces his professional connection from the time when the name Hank Williams was but another "drifter" passing

before the Bench of a local small claims and misdemeanor Court. But for the professional care, tenacity, diligence, interest and concern of this gentleman, the estate of this ward would not be as considerable as it is, nor would its future prospects be so bright. His conduct is in the highest tradition of a very noble profession.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court as follows:

1. That the contract in question is in the best interest of the ward and that the decree of this Court dated March 19, 1963 should not be vacated.

2. That the child born to one Bobbie W. Jett is not an heir of the late Hiriam (Hank) Williams within the meaning of the Copyright Law.

3. That certain provisions of the contract do not contain sufficient clarity. That these provisions are subject to additional attention by the parties hereto. That in the failure of the parties hereto to reach accord, the Court upon application will proceed to adjudge these matters. That the Court retains jurisdiction of this cause to effect this provision.

It is regrettable cordiality does not exist in this situation. It would seem that the large and significant community of interest between the ward and Respondent Rose could build a bridge which would renew and continue one of the very few genuine traditions found in the entire entertainment industry, now noted for its phony traditions. It is hoped by the Court that this area of negotiation will lead to this.

4. That the fee of the Guardian ad Litem be $5,698.72 which sum shall include all expenses including travel and that the same be taxed as part of the cost.

5. That the cost of these proceedings be taxed one-third against the guardianship and two-thirds against Respondent Rose. The taxing against the guardianship is based upon the fact that the funds expended belong to the ward and the ward is now the only petitioner.

DONE, this the 30 day of Jan, 1968.

/s/ Richard P. Emmet
Circuit Judge